LOCAL EPISCOPAL BODIES IN EAST AND WEST

PAUL PALLATH

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Author

Paul Pallath

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ABBREVIATIONS

AG Ad Gentes, Decree on the Church's

Missionary Activity

AAS Acta Apostolicae Sedis

AKK Archiv für Katholisches Kirchenrecht

Alberigo COD G. Alberigo, P. P. Joannou, C. Leonardi

& P. Prodi, eds., Conciliorum

oecumenicorum decreta, Bologna 1962

Ap. Const. Apostolic Constitution

Ap. Lett. Apostolic Letter

Ap. Exh. Apostolic Exhortation

AS Acta synodalia sacrosancti concilii

oecumenici Vaticani II

ASS Acta Sancta Sedis

C. Canon

CC. Canons

CCEO Codex Canonum Ecclesiarum

Orientalium

CD Christus Dominus, Decree on the

Bishop's Pastoral Office in the Church

CIC 1917 . Codex Iuris Canonici, 1917

CIC Codex Iuris Canonici, 1983

CIC Fontes Codex Iuris Canonici, Fontes, 9 vols.

CLSA Canon Law Society of America

DDC Dictionnaire de Droit Canonique, 7 vols,.

Paris 1935-1965.

DE Il Diritto Ecclesiastico

DTC Dictionnaire de Théologie Catholique, 15

Toms in 30 vols., Paris 1935-1965

ERC Eastern Ecclesiastical Review

Joannou CCO P. P. Joannou, ed., Les canons des conciles

oecuméniques, Grotaferrata 1962

Joannou CSP P. P. Joannou, ed., Les canons des synodes

particuliers, Grotaferrata 1962

LCEC J. T. MARTIN DE AGAR, Legislazione

delle conferenze episcopali complementa-

real C.I.C., Milan 1990

LG Lumen gentium, Dogmatic Constitution

on the Church

LTK Lexicon für Theologie und Kirche

Mansi J. D. Mansi, Sacrorum conciliorum nova

et amplissima collectio, vols. 53

ME Monitor Ecclesiasticus

NEC New Catholic Encyclopedia

OCA Orientalia Christiana Analecta
OCP Orientalia Christiana Periodica

OE Orientalium Ecclesiarum, Decree on the

Catholic Oriental Churches

ÖAK Österreichisches Archiv für Kirchenrecht

PCCICOR Pontificia Commissio Codici Iuris

Canonici Orientalis Recognoscendo

Percival H. R. Percival, The Seven Ecumenical

Councils of the Undivided Church,

Michigan 1988.

Periodica Periodica de re Morali, Canonica,

Liturgica

PG Patrologiae cursus completus, Series

Graeca, 161 volumes

PL Patrologiae cursus completus, Series

Latina, 217 volumes

POC Proche-Orient Chretién

RDC Revue de Droit Canonique

REDC Revista Española de Derecho Canònico

and the second s	
SC	Studia Canonica
SCCHEO	Schema Canonum De Constitutione
	Hierarchica Ecclesiarum Orientalium
SCICO	Schema Codicis Iuris Canonici Orientalis
SVTQ	St. Vladimir Theological Quarterly
Tanner DEC 1	N. P. TANNER ed., Decrees of the Ecu menical Councils, vol. 1
Tanner DEC 2	N. P. TANNER ed., Decrees of the
<i>V</i>	Ecumenical Councils, vol. 2
TDNT	Theological Dictionary of the
	New Testament
TI	$Theological\ Investigations$
TQ	Theologische Quartalschrift
TS	Theological Studies
VJTR	Vidyajyoti Journal of Theological
•	Reflection

World Council of Churches

Zeitschrift für Katholische Theologie

WCC

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PREFACE

I am very happy to contribute the Preface to this latest book by Fr Paul Pallath. At a time when Pope John Paul II is asking how the Roman primacy can be exercised in a new way to meet a new situation this study of local episcopal bodies is particularly opportune.

It is a clear and well-documented account of the historical roots as well as the structure and function of Local Episcopal Bodies in East and West that provides much useful historical, and canonical information concerning all the local episcopal bodies that are enumerated in the Codex Canonum Ecclesiarum Orientalium and in the Codex Iuris Canonici. The decision to discuss both codes is a wise one and one that will encourage mutual recognition and cooperation between all the Catholic Churches. His detailed comparative commentary on this recent legislation will, I am sure, be very useful for many bishops and other administrators.

The book is also ecumenically opportune because it begins with the a clear account of how the Church was administered throughout the first millennium of its history, when East and West formed a united Church. The Church was always one, holy, catholic and apostolic but this did not entail a highly centralized administrative authority. On the contrary, all the normal business of Church administration was carried out at the local level - the election of bishops, the settlement of inter-diocesan problems, legislation for the good of the local Church - all this was the responsibility of local episcopal bodies. Canon 34 of the **Apostolic Canons** laid down the guiding principle that was in fact followed both in the East and in the West.

In his encyclical on unity of 1995, *Ut Unum Sint*, Pope John Paul II has asked that there be "a patient and fraternal dialogue" on the exercise of the Roman primacy in the modern ecumenical climate. Paul Pallath does not discuss this question directly in his book but his clear account of the history and structure of local episcopal bodies indicates the direction in which a response to the Pope could lie. A number of Catholic bishops have proposed that the Vatican Council's doctrine of collegiality

should be given greater structural effect within the Catholic Church. What can be done positively to commend the Primacy of the Pope to all Christians? This question is being widely discussed and a variety of responses are being given. The highly centralized bureaucracy of the Catholic Church should be examined with a view to more devolution of authority. Some propose that there be some form of return to the earlier pattern of the first millennium. Within the Church the Pope should continue to encourage the activity and full development of what he himself has called "the instruments of collegiality" that were instituted in the climate of the Second Vatican Council.

The very notion of collegiality is being refined and developed and Fr Pallath's book discusses a number of the "instruments of collegiality" mentioned by the Pope: the episcopal conference in the Latin Church and the Synod of bishops of the patriarchal Church, as well as all other local episcopal bodies that are governed by the two codes. Such a study constitutes an essential point de départ for any informed discussion of the possibility of a devolution of ecclesiastical authority. This straightforward account of history, structure and function of the various local episcopal bodies within the Catholic Church is interesting and informative in itself. It also indicates how these episcopal bodies can be developed in such a way to provide. on the one hand; more effective local church administration and on the other so as to be of greater assistance to the Bishop of Rome in his role as Successor of Peter and principle of unity within the Church.

For such reasons I congratulate the author for having produced such a timely and useful publication.

Prof. Clarence Gallagher SJ

Former Rector of the Pontifical Oriental Institute, Rome and the Dean of the Faculty of Oriental Canon Law.

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Campion Hall
Oxford University
England

GENERAL INTRODUCTION

Pope John Paul II in the apostolic constitution "Sacri canones" by which he promulgated the Code of Canons of the Eastern Churches on 18 October 1990 solemnly declared that "From the beginning of the codification of the canons of the Eastern Churches there was the firm will of the Roman Pontiffs for the promulgation of two Codes: one for the Latin Church, the other for the Eastern Catholic Churches. This would clearly show the observance of that which results in the Church by God's Providence — that the Church itself, gathered in the one Spirit breathes as though with two lungs — of the East and of the West — and that it burns with the love of Christ in one heart having two ventricles".1

The Catholic Church is the communion of different Churches which as the Pope indicated can be grouped into two blocks: the Churches of the East and that of the West. The Latin Church, though extended all over the globe, transcending all national boundaries and embracing peoples of various races and cultures, remains a single patriarchate. This Church lives the faith all over the world according to the liturgy, theology, spirituality and discipline of the Roman tradition or rite though with legitimate pluralism of theological expressions and genuine liturgical adaptations consonant with the socio-cultural milieu of each people or nation. The ecclesial life of the Western patriarchate is regulated by the Code of Canon Law, promulgated in 1983.

Though the Churches of the East have their own manner of living the faith according to different rites ensuing from the five great traditions: Alexandrian, Antiochian, Armenian, Chaldian and Constantinopolitan, they possess certain common essential features and basic orientations, apart from the Latin Church, in liturgy, theology, spirituality and canonical discipline. According to Ivan Zuzek, "although the five great Eastern traditions differ considerably as regards their patrimonium liturgicum, they seem to differ much less as

¹ JOHN PAUL II, Ap. Const. "Sacri canones", AAS 82 (1990) 1037.

regards their patrimonium spirituale et theologicum. As far as their natrimonium disciplinare is concerned, both regarding the hierarchical structure of the Churches sui juris and the various other sections of canon law, there is good basis for holding that it is substantially the same for all five of the great Eastern traditions". 2 Regarding the common canonical heritage of the Eastern Churches, Pope John Paul II states: "in such a wondrous variety of rites, that is, in the liturgical, theological, spiritual and disciplinary patrimony of individual Churches [...] the sacred canons deservedly are considered to be clearly a conspicuous part of this same patrimony, which constitutes a single and common foundation of canons for ordering all of the Churches. Nearly every Eastern collection of disciplinary norms specifically referred to and invoked the sacred canons as the principal source of law". Because of the communality of the disciplinary patrimony of the different Eastern Churches, a single Code: the Code of Canons of the Eastern Churches was promulgated in October 1990.

As we have already pointed out, the Catholic Church is the communion of the Churches of the East and that of the West. These Churches are of equal rank and have the same rights and obligations, even with regard to the preaching of the Gospel in the whole world (cf. OE 3). Though the different Churches of the Catholic communion differ among themselves in liturgy, theology, spiritual heritage and ecclesiastical discipline, they have the same faith, the same sacraments and the same hierarchical government under the guidance of the Roman Pontiff who as the visible sign of unity and the ultimate guarantee of communion 'presides in love' over the universal Church. The unity in diversity of the Churches of the Catholic communion is well expounded by Lumen gentium: "By divine providence it has come about that various churches, founded in various places by the apostles and by their successors, have in

² I. ZUZEK, "The Ecclesiae Sui Iuris in the Revision of Canon Law", in R. Latourelle, ed., Vatican II: Assessment and Perspectives Twenty-Five Years After, vol. 3, New York 1989, 298.

³ JOHN PAUL II, Ap. Const. "Sacri canones", AAS 82 (1990) 1034; cf. Nuntia 3 (1976) 18-19.

the course of time become joined together into several groups, organically united, which, while maintaining the unity of faith and the unique divine constitution of the universal church, enjoy their own discipline, their own liturgical usage and their own theological and spiritual patrimony. Among these there are some, especially the ancient patriarchal churches, like matrices of the faith, which have given birth to others as daughters; and right down to our own times they are more closely bound to these churches by the bond of charity in sacramental life and in mutual respect for rights and duties. This variety of local churches, in harmony among themselves, demonstrates with greater clarity the catholicity of the undivided church[...]" (LG 23).

Just as the Catholic Church is the communion of the Churches of the East and of the West, the Code of Canon Law (the common law of the Latin Church promulgated in 1983), the Code of Canons of the Eastern Churches (the common law of the Eastern Churches promulgated in 1990) and the Pastor bonus (which determines the structure and ministry of the Roman Curia, promulgated in 1988) together form the canon law of the Catholic Church.⁴ On the occasion of the solemn presentation of the Eastern Code to the Roman Synod of Bishops on 25 October 1990. Pope John Paul II ardently solicited that this Code should be welcomed by the entire Catholic Church and that it shall be regarded as belonging to the disciplinary patrimony of the universal Church. The Pope goes on to state: "In presenting the Code to this assembly, which is representative of the Universal Church, I wish to say that I consider it an integral part of the one corpus iuris canonici, made up of the three above mentioned documents, promulgated over a span of seven years".5

Since the two Codes of canon law together with *Pastor bonus* constitute a single *corpus*, any study which does not duly consider these three documents remains imperfect and incomplete. The present work is an endeavour to accomplish a

⁴ Cf. JOHN PAUL II, Ap. Const. "Sacri canones", AAS 82 (1990) 1038-1039.

⁵ L'Osservatore Romano, 27 October 1990, 4.

comprehensive comparative review of both Codes of canon law and Pastor bonus under the aspect of local episcopal bodies.

In this book, a local episcopal body denotes any assembly of bishops of a local Church (for example, Church sui iuris, bishops of a nation, region or province) convened and presided over by the competent local ecclesiastical authority (for example, patriarch, major archbishop, metropolitan, president) according to the norm of law enshrined in any of the Codes of canon law, for deliberation and regulation of ecclesial life. Thus excluded from our investigation are episcopal bodies of the universal Church convoked by the supreme authority of the Church, such as the ecumenical councils.

After the first chapter, which can be considered as a common general introduction to the local episcopal bodies of the East and of the West, the book is divided into three main parts: 1) the local episcopal bodies of the East; 2) the local episcopal bodies of the West; and 3) the encounter between East and West.

The first chapter entitled "Local Episcopal Bodies according to the Common Tradition of the Church" outlines the origin and progress of the different kinds of synods and councils in the East and West, basing mainly on the common tradition of the Church, as embodied in the Apostolic Tradition, first seven ecumenical councils and important local synods generally accepted by all the Churches. Then we evaluate in a compendious manner the legislative, judicial, electoral and administrative powers of the local episcopal bodies during the first ten centuries of communion between East and West. Beyond doubt all the modern local episcopal bodies are ramifications and offshoots of the ancient episcopal bodies, and hence this chapter makes up an essential ressourcement and fundamental basis for our further investigation.

Part One: Local Episcopal Bodies of the East

The new Eastern Code envisages three established and well defined forms or grades of Churches *sui iuris*: patriarchal Churches (cc. 55-150), major archiepiscopal Churches (cc. 151-154) and metropolitan Churches (cc. 155-173). In

addition to these three, there are other Churches sui iuris which immediately depend on the Apostolic See (cc. 174-176). Of the four kinds of Churches, patriarchal and major archiepiscopal Churches have synods of bishops for their internal governance (cc. 102-113). With regard to synodal governance there is no difference between patriarchal and major archiepiscopal Churches if we exclude the fact that the synodal election of major archbishops requires confirmation from the Roman Pontiff (c. 153 § 2), while that of the patriarchs needs no intervention from a higher authority. The episcopal body of metropolitan Churches sui iuris is called council of hierarchs (cc. 164-171). The other Churches sui iuris have one or two bishops or another hierarch who depend directly on the Apostolic See and have no episcopal body as such.

In addition, the Eastern Code knows other local episcopal bodies such as the metropolitan synod of a province within the territorial boundaries of a patriarchal or major archiepiscopal Church (cf.cc. 133-139); the patriarchal, major archiepiscopal and metropolitan assemblies (cc. 140-145 & 172); and the assemblies of hierarchs of several Churches sui iuris (c. 322). In the Eastern Code the only episcopal body which is not "local" according to our criterion is the ecumenical council - the assembly of the bishops of the universal Church, convened and presided over by the Roman Pontiff (cc. 49-54). Thus, the local episcopal bodies of the East are the following:

- 1. The synod of bishops of patriarchal and major archiepiscopal Churches;
- 2. The council of hierarchs of metropolitan Churches sui iuris;
- 3. The patriarchal, major archiepiscopal and metropolitan assemblies;
- 4. The provincial synod;
- 5. The assembly of hierarchs of several Churches sui iuris.

The first part of the book, which deals with the local episcopal bodies of the East, is divided into two main sections: the first section is dedicated to the synod of bishops and the second to other local episcopal bodies of the East. As already

indicated the first section of part one (chapters 2, 3 & 4) comprehensively analyzes the structure, organization, membership, major powers, as well as the rights and obligations of the synod of bishops of the patriarchal and major archiepiscopal Churches according to the new Eastern Code in comparison with the old legislation contained in the motu proprio Cleri Sanctitati and Sollicitudinam Nostram.

We treat the council of hierarchs of metropolitan Churches *sui iuris* (chapter 5) and the patriarchal, major archi episcopal and metropolitan assemblies (chapter 6) in the second section of part one. The council of hierarchs of metropolitan Churches *sui iuris* is the assembly of all and only the ordained bishops of the same Church convoked and presided over by the metropolitan. After considering the origin and evolution of the metropolitan Churches *sui iuris*, we proceed to an accurate articulation of the nature, structure, functioning and competence of the council of hierarchs.

The institution of patriarchal, major archiepiscopal and metropolitan assemblies is an innovation of the new Eastern Code to ensure the participation of the representatives of the priests, religious and lay people along with their bishops according to each one's condition and function in the mission and ministry of the Church. In the strict canonical sense, such an assembly cannot be designated an episcopal body because by law, representatives of various sections of the people of God are its members together with the bishops. Nonetheless, we include this mixed ecclesial body in the book considering its importance in the life of the Church and for the sake of completeness.

We deal with the assemblies of hierarchs of several Chu-rches *sui iuris* in the third part, entitled "the Encounter between East and West", since such assemblies can be considered as a common institution of the East and West. In fact, in all the already-existing assemblies, the bishops of the Latin Church are also members, even though the Latin Code is silent about such inter-Church conventions.

In this book we do not deal with metropolitan synods, namely the assembly of the bishops of a province inside the territorial boundaries of a patriarchal or major archiepiscopal Church, convoked and presided over by the metropolitan, because on the one hand, in many Eastern Churches the metropolitan system has become extinct. On the other hand, the Eastern Code has determined only the minimum regarding the metropolitan of a patriarchal or major archiepiscopal Church, leaving the rest to the particular law of each Church.

Part Two: Local Episcopal Bodies of the West

According to the Code of Canon Law, there are at least five kinds of episcopal bodies which function at different levels of ecclesial communion:

- 1. Ecumenical Council (cc. 336-341): assembly of all the bishops of the universal Church convoked and presided over by the Roman Pontiff (cc. 338-341). The ecumenical council enjoys supreme and full power over the universal Church (cf. c. 336).
- 2. The Synod of Bishops (cc. 342-348): assembly of that group of bishops who have been chosen from different regions of the world and who meet at stated times to foster a closer unity between the Roman Pontiff and the bishops (c. 342). A synod of bishops whether a general session which treats matters which directly concern the good of the entire Church or a special session, which deals with matters which directly concern a definite region or regions, is directly under the authority of the Roman Pontiff (c. 344). Hence, it is not a local episcopal body.
- 3. Plenary Council (cc. 439-446): assembly of the bishops who belong to the same conference of bishops, presided over by a bishop elected by the conference from among its members.
- 4. Provincial Council (cc. 439-466): assembly of the bishops of a province canonically convoked and presided over by the Metropolitan.
- 5. Bishops' Conference (cc. 447-459): in principle, assembly of the bishops of a nation convoked and presided over by the president of the conference.

Of these five possible episcopal bodies, the ecumenical council and the synod of bishops are episcopal bodies of the universal Church, convoked by the Roman Pontiff. The other three - plenary councils, provincial councils and bishops' conferences - are meant for a local Church or group of particular

Churches (dioceses), and they are directly under the competent local ecclesiastical authority. Hence such assemblies can be called local or particular episcopal bodies. This is also evident from the systematic arrangement of the canons in CIC 1983. The canons which deal with the ecumenical council and the synod of bishops are placed under the title De suprema Ecclesiae auctoritate where as the chapters which treat particular councils and episcopal conferences are arranged under the heading De ecclesiis particularibus deque earundem coetibus. It is clear that a diocesan synod convened and presided over by the diocesan bishop is not a local episcopal body, and thus it does not come within the scope of our study (cc. 460-468). In short, the local episcopal bodies of the West are particular councils and bishops' conferences.

The seventh chapter of this book "Particular Councils of the Latin Church" evaluates the evolution of the provincial and plenary councils and their competence in the second millennium on the basis of the doctrine of the ecumenical councils of this period. Then we analyze the nature, structure and competence of the provincial and plenary councils according to the Code of Canon Law (1983) in comparison with CIC 1917. Finally we consider the nature and extent of the legislative power of the particular councils.

The eighth chapter of the book is dedicated to the "Bishops' Conference of the Latin Church". Here also our methodology is the same: we indicate first the historical evolution, structure and composition of the bishops' conference. Then we proceed to a detailed analysis of the legislative power of the episcopal conferences scrutinizing all the instances indicated by CIC 1983 in which the episcopal conference can legislate. We investigate also whether the bishops' conference has any judicial, electoral and administrative powers according to the present canon law.

The ninth and final chapter of this section is a comparison of the particular councils and the bishops' conference of the Latin Church in order to demonstrate their similarities and differences and to highlight the specific mission of each of these institutions in the ecclesial communion.

Part Three:

The Encounter between the East and the West

This part has two chapters. In the first chapter (chapter 10 of the book) we compare the local episcopal bodies of the East and the West, especially the most ancient and most authentic episcopal body of the East: the synod of Bishops with the bishops' conference of the Latin Church. We strive to draw up a number of parallels and divergences between them.

The last chapter (chapter 11) as already indicated is devoted to the assemblies of hierarchs of several Churches suiiuris. Here we present the reality of multiple jurisdiction and then proceed to an in-depth analysis of the nature, struture, purpose and functioning of inter-Church assemblies on the basis of Vatican II, the Eastern Code and the statutes of the already-existing assemblies.

The book ends with a critical evaluation and a classified bibliography.

My sincere thanks are due to Prof. Rev. Dr. Xavier Koodapuzha for accepting this work for publication in the series of the Oriental Institute of Religious Studies, India (OIRSI), Kottayam. I am thankful to the Manager and staff of WIGI Offset Printers Manganam for its printing.

PAUL PALLATH

Chapter One

LOCAL EPISCOPAL BODIES ACCORDING TO THE COMMON TRADITION OF THE CHURCH

Introduction

For centuries, the Churches of the East and West lived in full communion, celebrating together the ecumenical councils which defended the deposit of faith against any alteration and promulgating laws which safeguarded the basic unity of ecclesiastical discipline. If disagreements in faith and discipline arose among them, the Roman See acted by common consent as moderator (UR 14). During this life of mutual communion and interdependence, the Western Church has drawn largely from the treasury of the East for its liturgy, spiritual tradition and jurisprudence (UR 14).

In his recent encyclical letter *Ut Unum Sint* Pope John Paul II expressed his ardent desire for the full communion of all the Churches with the Catholic Church at the dawn of the third millennium. In this encyclical, the Pope affirmed: "Many elements of great value (*eximia*) which in the Catholic Church are part of the fullness of the means of salvation and of the gifts of grace which make up the Church, are also found in the other Christian communities". This is particularly true with regard to the Eastern Churches which possess the true sacraments (UR 15) and regulate the ecclesial life according to the laws promulgated by the first ecumenical councils and local synods.

With an ecumenical motive, I base my analysis of the powers and functions of the local episcopal bodies on the apostolic tradition, and on the ecumenical councils and local synods accepted by Orient and Occident, Catholics and non-Catholics. As far as the Eastern Churches are concerned, their whole canonical tradition is based on the "sacred canons" of the first millennium. Pope John Paul II in the apostolic

¹ Cf. Letter of Paul VI to Patriarch Athenagoras on 25 July 1967, Anno ineunte AAS 59 (1967) 853.

² JOHN PAUL II, Encyclical Letter *Ut unum sint*, 25 May 1995, no. 13, AAS 87 (1995) 929.

constitution "Sacri canones" maintains that all the Catholic Oriental Churches deservedly consider the "sacred canons" a conspicuous part of their patrimony, which constitutes a single and common foundation of canons for ordering all of the Churches. Nearly every Eastern collection of disciplinary norms specifically referred to and invoked the "sacred canons" as the principle sources of law.³ Even in the new Eastern Code promulgated by the Pope on 18 October 1990, the ancient law of the Eastern Churches is for the most part received or adapted, and therefore, the canons of this Code are to be assessed mainly according to that law (cf. c. 2).

The Orthodox Churches also agree that the ancient canons are "the main and most fundamental source of Church law, in the sense that they contain the guiding and fundamental principles, on which all legislative work of the Church, created by changing ecclesiastical circumstances must be based". ⁴ As Pope John Paul II puts it, "the Eastern Churches which are not yet in full communion with the Catholic Church, are governed by the same and fundamentally one patrimony of canonical discipline, that is, 'the sacred canons' of the Church of the first centuries". ⁵

The Latin Church and the Eastern Churches celebrated together the first ecumenical councils, and therefore, it goes without saying that the canons of these councils are the common patrimony of the East and West. Moreover, just as in the East, the Latin Church also received the legislation of the important local synods (at least in part)

³ JOHN PAUL II, Ap. Const. "Sacri Canones", AAS 82 (1990) 1034; Cf. also Nuntia 3 (1976) 18-19; Nuntia 26 (1988) 102-104; also the Allocution of Pope PAUL VI to the members of PCCICOR on 18 May 1974, in Nuntia 1 (1975) 4-8; I. ZUZEK, "The Ecclesia Sui Iuris in the Revision of Canon Law", 298-299.

B. ARCHONDONIS, "A Common Code for the Orthodox Churches", Kanon 1 (1973) 46; cf. N. MILASH, Das Kirchenrecht der Morgenländischen Kirche: Nach den allgemeinen Kirchenrechtsquellen und nach den in den autokephalen Kirchen geltenden Spezialgesetzen, Mostar 1905, 80; D. FALTIN, "L'unità della Chiesa e la legislazione canonica delle Chiese orientali", Unitas (gennaio-marzo 1972) 174-184.

⁵ AAS 82 (1990) 1035.

of the first millennium.⁶ Therefore, we base our study on the ecumenical councils and local synods accepted by the Catholic and non-Catholic Churches. Ecumenical councils accepted by all the Churches are the following:⁷

- 1) Nicaea (325), 20 canons
- 2) Constantinople I (381), 7 canons
- 3) Ephesus (431), 8 canons
- 4) Chalcedon (451), 30 canons
- 5) Constantinople II (553), no disciplinary canons enacted
- 6) Constantinople III (680-681), no canonical norms promulgated
- 7) Nicaea II (787), 22 canons
- 8) Constantinople IV (869-870), 27 canons⁸
- 9) Sometimes we refer to the Council in Trullo, also called Quinisext council (692) considering its importance in the East.⁹

We also analyze the legislation of the important local synods whose canons have a universal importance since they are accepted by the ecumenical councils and consequently received by the Latin Church (at least in part) and the Oriental

⁶ C. GALLAGHER, "Sacri Canones nel Decretum di Graziano", in *Ius in vita et missione Ecclesiae*, (a cura di Pontificium Consilium de Legum Textibus Interpretandis), Città del Vaticano 1994, 766-768.

⁷ The pre-Chalcedonian Churches (the Syrian Orthodox Church, the Coptic Church, the Ethiopian Church, the Armenian Church and the Malankara Orthodox Syrian Church) accept only the first three councils.

This council, considered ecumenical by the Catholics, is not found in any canonical collections of the Byzantines. We refer to it as a subsidiary source since it is accepted by the Catholics and since it is the last ecumenical council of the first millennium.

⁹ It is remarkable that the Council in Trullo was also included among the sources of the new Eastern Code. Pope John Paul II mentioned this council in "Sacri Canones", AAS 82 (1990) 1034. Cf. I. ZUZEK, "Reflessioni circa la constituzione Apostolica "Sacri Canones", (18 ottobre 1990)", Apollinaris LXV (1992) 57-58.

Churches. Such local synods are: Ancyra (314), Neocaesarea (315), Gangra (340), Antioch (341), Laodicea (343-381), Sardica (343) and Carthage (419).

The first canon of the fourth ecumenical council in Chalcedon (451) reads: "We have deemed it right that the canons hitherto issued by the saintly fathers at each and every synod should remain in force". 10 As far as the Eastern Churches are concerned, the validity of these local synods are definitively determined by the Council in Trullo, in its second canon. 11 Again the first canon of the second Council of Nicaea (787), presided over by the legates of Pope Adrian I. solemnly declares: "We joyfully embrace the sacred canons and we maintain complete and unshaken their regulation. both those expounded by those trumpets of the Spirit, the apostles worthy of all praise, and those from the six holy universal synods and from the synods assembled locally for the promulgation of such decrees, and from our holy fathers. Indeed all of these, enlightened by one and the same Spirit, decreed what is expedient".12 Since the canons of these councils are accepted and ratified by two ecumenical councils, they form part of the canonical patrimony of the universal Church

¹⁰ TANNER, DEC 1, 87; ALBERIGO, COD, 63; JOANNOU, CCO, 68.

[&]quot;Hoc quoque huic sanctae synodo optime maximeque placuit, ut ab hinc deinceps ad animarum medelam et morborum curationem firmi securique maneant, qui a sanctis et beatis patribus qui nos praecesserunt, suscepti ac confirmati atque adeo nobis traditi sunt sanctorum et gloriosorum apostolorum nomine LXXXV canones [...] Obsignamus etiam reliquos omnes canones, qui a sanctis et beatis nostris patribus expositi sunt, id est, a CCCXVIII sanctis patribus, qui Nicaeae convenerunt: iisque qui Ancyrae, et iis etiam qui Neocesareae, similiter et qui in Gangris; preaterea et iis qui in Antiochia Syriae, atque iis etiam qui in Laodicea Phrygiae; preaterea autem et a CL patribus, qui in hac a deo custodita et regia civitate convenerunt; et a CC qui in Ephesiorum metropoli primo coacti sunt; et a DCXXX sanctis et beatis patribus, qui in Chalcedone; similiter et iis qui Sardicae, et qui Carthaginae [...]". Council in Trullo c. 2, JOANNOU, CCO, 120-122; MANSI, 11, 939.

¹² TANNER, DEC 1, 138-139; ALBERIGO, COD, 114-115; JOANNOU CCO, 247.

Moreover, for the sake of completeness we also refer to the canons of some prominent plenary councils of the Latin Church in the first millennium like the Synod of Hipo (393), the Synod of Arles in Gaul (314), the Synod of Orange (441), the second Synod of Arles (443), the first Synod of Orleans (511), the Synod at Epaon in Burgundy (517) and the third Synod of Toledo (589).

In short, we analyze the powers and functions of the local episcopal bodies on the basis of the Apostolic tradition as expressed in the Acts of the Apostles and the Apostolic Canons and on the basis of the canons of the ecumenical councils and important local synods accepted by all the Churches, oriental and occidental, Catholic and non-Catholic. We refer to the canons of some plenary councils of the Latin Church in the first millennium in order to consolidate and strengthen our arguments.

1. The Origin and Development of Local Episcopal Bodies

The origin and development of local episcopal bodies can be traced back to the apostolic praxis as described in the Acts of the Apostles. According to the testimony of the Acts, the government of the primitive communities of Jerusalem was initially entrusted to the twelve Apostles under the leadership of Peter, assisted by presbyters and elders. The presbyters and elders took part in the responsibilities of the apostles, though in a subordinate manner. They also participated in the decision-making assemblies, which could be called "synodal assemblies" in a large sense, not in the technical sense that is attributed to them today.¹³

Many see the application of the synodal principle especially in connection with the election of Matthias (Acts 1: 15-26), the election of seven deacons (Acts 6: 1-6), and the Synod of Jerusalem (Acts 15), underlying the fact that these decisions were taken "in agreement with the whole Church"

¹³ Cf. D. FALTIN, "L'institution synodale dans le concile Vatican II", Kanon 2 (1974) 39-40.

or in common.¹⁴ Matthias was elected in the community of all. Peter as the head of the community of "brethren" took the initiative to select "one of the men who have accompanied us during all the time that the Lord Jesus went in and out among us" from the baptism of John till his resurrection (Acts 1, 21-22). According to the suggestion of Peter, the Christian community presented two persons, Joseph and Matthias, who were worthy of ministry and apostleship. Then they prayed and proceeded to elect Matthias by lot (Acts 1, 23-26).

Similarly, the twelve apostles summoned the "body of disciples" to choose the seven deacons. The disciples selected seven men from among them who were full of faith and the Holy Spirit (cf. Acts 6, 5), and these they set before the apostles. The apostles prayed and then laid their hands upon them, and thus they became the first deacons (Acts 6, 6). So the first ministers were elected by the "body of disciples" and then they were "consecrated" by the apostles.

We analyze in detail only the council of Jerusalem (Acts 15, 1-41) because it well expresses the nature and characteristics of a synod or council and it is considered by many as an authentic model of decision making in the Church.

1.1. The Council of Jerusalem - the Mother and Inspiration of All Councils

1. **The Problem:** due to the missionary activity of Paul and Barnabas, many gentiles believed in Jesus Christ, and thus a Christian community originated in Antioch (Acts 11, 19-24; 13, 13-52 & 14, 21). Paul and Barnabas after their first missionary Journey and the evangelization of many peoples in Asia Minor again returned to Antioch. When they arrived, they gathered the Church together and declared all that God had done with them, and how he had opened a door of faith to the gentiles (Acts 14, 27). At this stage a problem emerged in Antioch which Luke describes in the following manner:

¹⁴ Cf. P. DUPREY, "The Synodical Structure of the Church in Eastern Theology", One in Christ 7 (1971) 152-153; J. FORGET, "Conciles", DTC 3, 1, 638.

But some men came down from Judea and were teaching the brethren, 'Unless you are circumcised according to the custom of Moses, you cannot be saved'. And when Paul and Barnabas had no small dissension and debate with them, Paul and Barnabas and some of the others were appointed to go up to Jerusalem to the apostles and elders about this question (15, 1-2).

Those who provoked the controversy were "some men came down from Judea". They targeted those who were converted to Christianity from pagans or gentiles. The judaisers maintained that "Unless you are circumcised according to the custom of Moses, you cannot be saved". According to them. circumcision and submission to Mosaic law were necessary for salvation. Therefore, they wanted to impose circumcision. and thus the observation of Mosaic law in all its particulars. on all those who wanted to embrace the Christian faith. It should be noted that the admission of gentiles to Christianity is not the point of controversy, but only the conditions for their admission. 15 Paul and Barnabas, who opened the frontiers of Christianity to the gentiles without obliging them to do circumcision, defended their position. So there was much debate about the problem, and finally Paul and Barnabas and some other delegates were appointed by the Church to go up to Jerusalem to the "apostles and elders about this question" (cf. Acts 15, 2-3).

2. The Assembly of the whole Community and the Opposition of Some: Luke describes in the following manner the arrival of the delegation from Antioch and the reception given to it by the whole Christian community in Jerusalem:

When they came to Jerusalem, they were welcomed by the church and the apostles and the elders, and they declared all that God had done with them. But some believers who belonged to the party of the Pharisees rose up, and said, 'It is necessary to

G. LEONARDI, "É ancora attuale il concilio di Gerusalemme? (At 15, 1-35)", Credere oggi, 76 (1993) 22; cf. R. FABRIS, Atti degli Apostoli, Brescia 1979, 96; G. SCHNEIDER, Commento teologico del nuovo testamento, gli atti degli apostoli, parte seconda, Brescia 1986, 235; F. F. BRUCE, The Book of the Acts, Michigan 1986, 303; The Interpreter's Bible, vol. 9, 195-197.

circumcise them and to charge them to keep the law of Moses' (15, 4-5).

The text mentions three kinds of people: "the Church" (the community of the faithful), "the apostles", and "the elders". ¹⁶ Paul and Barnabas "declared to them all that God had done with them", namely the conversion of the gentiles and their reception into the Church. But the whole community did not receive this message with joy. "Some believers who belonged to the party of the Pharisees", perhaps the delegates of those who created problems in Antioch or others who held the same position in the Jerusalem Church, rose up and said, "It is necessary to circumcise them and to charge them to keep the law of Moses". In fact, this group held that the observation of the Mosaic law is absolutely necessary for salvation, and therefore the gentiles who embrace the Christian faith should be circumcised and they should be obliged to keep the law of Moses.

3. The Synodal Assembly of the Apostles and Elders: after the assembly of all Christian faithful, "The apostles and the elders were gathered together to consider this matter" (15, 6). Though in the meeting which took place before the council in order to listen to Paul and Barnabas the whole Christian community was present, in the council itself only the apostles and "elders", who are witnesses of the Gospel and primarily responsible for the Church, participated. Paul and Barnabas naturally took part in the discussions. There was a serious debate concerning the problem.

Discourse of Peter (15, 7-11): Peter affirmed that gentiles heard the word of God and believed, and "God who knows the heart bore witness to them, giving them the Holy Spirit, just as he did to us; and he made no distinction between us and them, but cleansed their hearts by faith". All are equally "saved by the grace of the Lord Jesus" (15, 11) and

¹⁶ Cf. J. D. ZIZIOULAS, "The Development of Conciliar Structures to the Time of First Ecumenical Council", in Councils and Ecumenical Movement, WCC Studies 5, Geneva 1968, 36.

¹⁷ Cf. J. D. ZIZIOULAS, "The Development of Conciliar Structures", 36.

therefore, naturally, the circumcision and observance of Mosaic law is not necessary for salvation.¹⁸

The Intervention of Paul and Barnabas (15, 12): The whole assembly kept silence, and Paul and Barnabas described to them "what signs and wonders God had done through them among the Gentiles". The two are not defending their position theoretically, but only indirectly through the narration of facts, that is, the miracles that God himself had done among the pagans through them, and thus confirming that their position is according to the plan of God.¹⁹

Discourse of Jacob (15, 13-21): Also in harmony with Peter, Paul and Barnabas, Jacob accepted the fundamental principle that circumcision and Mosaic law should not be imposed on the gentiles who want to embrace the Christian faith. However, for the peaceful coexistence of the judeo-Christians and the gentile Christians, he suggested that they should abstain from: a) the pollutions of idols, b) from unchastity, c) from what is strangled and finally, d) from blood.²⁰

4. The Great Synodal Decree (15, 23-29): After sufficient discussion and debate about different aspects of the problem, the "apostles and elders" arrived at an accord on the basis of consensus. They also chose two "leading men among the brethren", Judas called Barnabas and Silas, as official delegates of the community and sent them to Antioch with Paul and Barnabas, bearing the following written synodal letter:

The brethren, both the apostles and elders, to the brethren who are of the Gentiles in Antioch and Syria and Cilicia, greeting. Since we have heard

¹⁸ G. SCHNEIDER, Commento teologico del nuovo testamento, 237-238; F. F. BRUCE, The Book of the Acts, 306-307; The Interpreter's Bible, vol. 9, 198-201.

¹⁹ G. LEONARDI, "É ancora attuale il concilio di Gerusalemme?", 26; G. SCHNEIDER, Commento teologico del nuovo testamento, 238-239.

²⁰ See G. LEONARDI, "É ancora attuale il concilio di Gerusalemme?", 26-30; R. FABRIS, Atti degli Apostoli, 97; G. SCHNEIDER, Commento teologico del nuovo testamento, 239-243; F. F. BRUCE, The Book of the Acts, 309-312; The Interpreter's Bible, vol. 9, 202-203.

that some persons from us have troubled you with words, unsettling your minds, although we gave them no instructions, it has seemed good to us, having come to one accord, to choose men and send them to you with our beloved Barnabas and Paul, men who have risked their lives for the sake of our Lord Jesus Christ. We have therefore sent Judas and Silas, who themselves will tell you the same things by word of mouth. For it has seemed good to the Holy Spirit and to us to lay upon you no greater burden than these necessary things: that you abstain from what has been sacrificed to idols and from blood and from what is strangled and from unchastity. If you keep yourselves from these, you will do well. Farewell.

We note some particulars of this synodal letter. From the introduction it is evident that the senders of the letter are "apostles and the elders", the leaders of the community of Jerusalem, and the receivers are "the brethren who are of the Gentiles in Antioch and Syria and Cilicia", and therefore not only the Christians who are of the Gentiles in Antioch. but also the community dispersed in the provinces of Syria and Cilicia. In the central part of the letter, it is emphasized that the two delegates were chosen "having come to one accord", and they are officially authorized by the authorities in Jerusalem to publish and execute the decision of the council. At the end of the letter, the conciliar decree is given. Repeating exactly what was established in the council, the decree is presented in a very solemn form as the common effort of the Holy Spirit and the apostles: "It has seemed good to the Holy Spirit and to us", and as a consequence it should be obediently received by all.21 The decision is made and communicated by the "apostles and the elders" exclusively, and it is to them that we should refer the important phrase: "It has seemed good to the Holy Spirit and to us". 22 The role of the "multitude"

²¹ Cf. G. LEONARDI, "É ancora attuale il concilio di Gerusalemme?" 76; G. SCHNEIDER, Commento teologico del nuovo testamento, 243-247; F. F. BRUCE, The Book of the Acts, 313-316; The Interpreter's Bible, vol. 9, 205-207.

²² Cf. J. D. ZIZIOULAS, "The Development of Conciliar Structures", 37.

was limited to the meetings concerning their information. The decision making itself, and its promulgation are the responsibility and right of the "apostles and elders".

5. The Reception of the Synodal Decree by the Community (Acts 15, 30-35): Luke describes the subsequent events in the following manner:

So when they were sent off, they went down to Antioch; and having gathered the congregation together, they delivered the letter. And when they read it, they rejoiced at the exhortation. And Judas and Silas, who were themselves prophets, exhorted the brethren with many words and strengthened them. And after they had spent some time, they were sent off in peace by the brethren to those who had sent them. But Paul and Barnabas remained in Antioch, teaching and preaching the word of the Lord, with many others also.

As decided by the "apostles and elders", the two delegates together with Paul and Barnabas went to Antioch where the problem originated and gave the letter to the community. In the words of Luke: "And when they read it, they rejoiced at the exhortation", meaning that they have whole-heartedly received the decision of the council with joy and consolation. The two delegates, using their charisms, also exhorted the brethren with many words and strengthened them in faith. In short, the problem was resolved, and after some time, the two delegates returned to Jerusalem.

According to the consciousness of the early Church and according to the apostolic tradition, "assemblies" or synods were the means to resolve doctrinal and disciplinary disputes arising in the Christian communities and to safeguard the unity and harmony of the Church on the basis of common consensus and concord. Important decisions concerning the expansion of the Church in the apostolic period were taken by the assembly of the "apostles and elders". Though the Jerusalem assembly was not a synod in the strict modern juridical sense, it was a clear indication of the collegial life of the Church even from the apostolic period and a prelude to all conciliar activity in the Church. All synodal activity in the Church, especially in the Eastern Churches, is based on

the example of the first synod of the apostles in Jerusalem and has developed in that perspective. Hence this ecclesial tradition presents itself as the continuation and perpetuation of the apostolic tradition. 23

1.2. Local Episcopal Bodies before the Ecumenical Council of Nicaea

In the early Church, the bishops were always aware that they together formed a community or college just as the apostolic college. On the basis of this collegial consciousness and after the model of the apostolic Synod of Jerusalem, collegial structures and synodal convocations developed spontaneously in the early Church under the providence of God, especially when the Church was confronted with serious problems that could not be resolved by a single bishop. Thus, the bishops of a region assembled together, normally under the leadership of the bishop of the metropolitan city, resolved the problems in a collegial manner and promulgated norms for common action.

The first synods were those held between 170 and 180 against the heresy of Montanism in Asia Minor. Eusebius speaks of assemblies in many places throughout Asia that examined the novel doctrines of the Montanists, pronounced them vain, rejected them as heresy, condemned and expelled them from the Church, and prohibited them from communion with the Church.²⁴ Eusebius also speaks of synods and

²³ Cf. J. HAJJAR, "The Synod in the Eastern Church", Concilium 8 (1965) 30; L. STAN, "Sinodalità", Oriente Cristiano 2 (1970) 87-88; HEFELE, also traces the origin of the synods back to the synod of Apostles, cf. C. HEFELE, Histoire des conciles I, 1, 2 and 125; J. A. FISCHER, "Die ersten Synoden", in W. Brandmüller, Synodale Strukturen der Kirche, Donauwörth 1977, 27-33; J. A. FISCHER, "Das sogenannte Apostelkonzil", in G. Schwaiger ed., Konzil und Papst: Historische Beiträge zur Frage der höchsten Gewalt in der Kirche, München -Paderborn-Wien 1975, 1-15; H. JEDIN, Ecumenical Councils of the Catholic Church, New York 1960, 13; W. BEINERT, "Konziliarität der Kirche", Catholica 33 (1979) 97-98; D. SAVRAMIS, "Das Apostelkollegium - Das soziologische Motive seines Ursprungs", in Konziliarität und Kollegialität, Innsbruck-Wien-München 1975, 70-86, 88-89.

²⁴ EUSEBIUS, Historia Ecclesiastica, V, 16.

assemblies in many Churches and the exchanges of synodal letters among the bishops of these Churches regarding the question of the celebration of Easter:

Hence there were synods and convocations of the bishops on this question; and all unanimously drew up an ecclesiastical decree, which they communicated to all Churches in all places, that the mystery of our Lord's resurrection should be celebrated on no other day than the Lord's day; and that on this day alone we should observe the close of paschal fasts. There is an epistle extant even now, of those who were assembled at the time: among whom presided Theophilus, bishop of the Church in Cesarea, and Narcissus, bishop of Jerusalem. There is also another epistle extant on the same question, bearing the name of Victor. An epistle, also of the bishops in Pontus, among whom Palmas, as the most ancient, presided: also of the Churches of Gaul, over whom Iranaeus presided. Moreover, one from those in Osrhoene, and the cities there. And a particular epistle from Bacchyllus, bishop of the Corinthians; and epistles of many others, who, advancing one and the same doctrine. also passed the same vote. And this, their unanimous determination, was the one already mentioned.²⁵

It is evident that in connection with the Easter question there were synods in Italy under Pope Victor of Rome, in Palestine under Theophilus of Cesarea and Narcissus of Jerusalem, in Pontus under Palmas, in Gaul under Irenaeus, in Corinth under Bacchylus and in many other places (189-199). Around the year 190, Bishop Noetus was condemned as a heretic by an assembly of bishops in Smyrna.

Based on the *Ecclesiastical History* of Eusebius, concerning the nature and structure of early councils, Zizioulas points out that:

(a) these first councils were strictly regional, usually covering an area of an *eparchia* of the Roman Empire, (b) the chairmanship of the council was in some places given to the bishop of the metropolitan

²⁵ EUSEBIUS, Historia Ecclesiastica V, 23.

city, but in other places (e.g., in Pontus) to the oldest of the bishops, (c) the importance was attached to the great number of participants as well as to the achievement of unanimity in the decisions taken by the council, and (d) the motive as well as the ultimate purpose of convocation of the council was related to the eucharistic communion. It should be also noted that conciliar activity was accompanied by a rich exchange of letters between bishops.²⁶

The third and fourth centuries witnessed several synods. Around the year 230, there were two synods against Origen and in the middle of the century, Roman and African synods on the question of the *lapsi* and Novasianism. There were also synods in Iconium (230-235) and in Antioch in 264 and 265. In the first half of the fourth century synods in Elvira (306), Rome (313), Arles (314), Ancyra (314) Neocaesaria (between 314-325) and Antioch (324) considered the questions of the *lapsi* and Donatism.²⁷

In short, synods became the lifestyle of the Church, both in the Occident and in the Orient by the second century. Even before the Council of Nicaea, the local Churches were grouped into provinces and synods were held. The bishops of the metropolitan city, normally considered as the head of the

²⁶ J. D. ZIZIOULAS, "The Development of Conciliar Structures", 42.

²⁷ For the origin and development of synodal structure and for a short account of different synods before the Council of Nicaea, cf. C. HEFELE, Histoire des conciles, I, 1, 125-385; H. GROTZ, Die Hauptkirchen des Ostens von den Anfängen bis zum Konzil von Nikaia (325), OCA 169, Rome 1964, 133-162; W. DE VRIES, "Die kollegiale Struktur der Kirche in den ersten Jahrhunderten", Una Sancta 19 (1964) 299-304: "Primat und Kollegialität auf den Synoden vor Nikaia", in Konziliarität und Kollegialität, Innsbruck-Wien-München 1975, 155-156; E. LANNE, "Églises locales et patriarcats à l'époque des grands conciles", Irénikon 34 (1961) 293-300; J. HAJJAR "La collegialità episcopale nella tradizione orientale" in G. Barauna, La Chiesa del Vaticano II, Firenze 1965, 812-817; G. DEJAIFVE, "La collegialità episcopale nella tradizione latina" in G. Barauna, La Chiesa del Vaticano II, Firenze 1965, 834-836; FISCHER, "Die ersten Synoden", 27-60; H. MAROT, "Conciles anténicéens et conciles oecuméniques", in Le concile et les conciles, Chevetogne 1960, 19-43; J. D. ZIZIOULAS, "The Development of Conciliar Structures", 34-48.

province, convoked and presided over the synods and established relationships with the bishops of other metropolitan cities. From the very beginning of Christianity, synods were understood as an expression of the communion and collegiality of bishops, and a service of unity for the Church, resolving questions of faith and discipline.

1.3. The Great Conciliar or Synodal Principle

The first and basic affirmation of the conciliar or synodal principle can be found in canon 34 of the collection known as "Apostolic Canons". The collection of Apostolic Canons comprises 85 canons which represent the very early canon law of the Church. Although the canons which make up the collection are of various dates, the majority of them are earlier than 300 AD. The collection, as we now have it, was made probably at a date not later than the middle of the fourth century. With regard to the name "Apostolic Canons", it is generally considered that these canons set forth the disciplinary principles which existed in the early Church, consonant with the doctrine and traditions of the Apostles. The Apostolic Canons to a great extent may be of apostolic origin, transmitted through oral tradition and committed to writing by their immediate successors.²⁹

Though the Western Church generally considered the collection of Apostolic Canons as a whole apocryphal, many of these canons were accepted also in the West.³⁰ On the

²⁸ Cf. C. VOGEL, "Unité de l'Église et pluralité des formes historiques d'organisation ecclésiastique du IIIe au Ve siècle", Unam sanctam 39 (1962) 601-616; E. LANNE, "Églises locales et patriarcats", 294-295; H. M. BIEDERMANN, "Die Synodalität. Prinzip der Verfassung und Leitung der Orthodoxen Kirchen und Kirche", in L. Hein, ed., Die Einheit der Kirche, Wiesbaden 1977, 298.

²⁹ Cf. PERCIVAL, 591-593; H. LECLERCQ, "Les canons dits Apostoliques", in C. Hefele, Histoire des conciles, II, 2, 1203-1221; J. MEYENDORFF, Byzantine Theology: Historical Trends and Doctrinal Themes, New York 1974, 80; N. MILASH, Das Kirchenrecht der Morgenländischen Kirche, 159.

³⁰ Cf. JOANNOU, CSP, 2; PERCIVAL, 592-593; P. DUPREY, "The Synodical Structure", 153; GAUDEMET, Les sources du droit de l'Église en occident du IIe au VIIe siècle, Cerf 1985, 24-25; C. GALLAGHER, "Sacri Canones nel Decretum di Graziano", 766.

contrary, the Oriental Churches never hesitated to recognize the ancient tradition of the Apostolic Canons. The authority of the eighty-five canons was definitely determined in the Council in Trullo (Quinisext AD 692), and in its enumeration of accepted canons, these canons were placed even before the ecumenical Council of Nicaea.³¹ Therefore, the Apostolic Canons are accepted on parity with the canons of the ecumenical councils in the East, especially by the Byzantine Churches.³²

In spite of the various questions concerning the collection in which such a canon is inserted and the obscurity of its content, we can assert that canon 34 outlines a very precise norm of action for all those who have the responsibility of the local Churches and indicates the consequence of the spiritual order that derives from the observation and application of this canon.³³ Canon 34 is as follows:

The bishops of every nation must acknowledge him who is first among them and account him as their head, and do nothing of major consequence without his consent; but each may do those things only which concern his own parish, and the country places which belong to it. But neither let him (who is first) do anything without the consent of all; for so there will be unanimity, and God will be glorified through Christ in the Holy Spirit.³⁴

^{31 &}quot;Hoc quoque huic sanctae synodo optime maximeque placuit, ut ab hinc deinceps ad animarum medelam et morborum curationem firmi securique maneant, qui a sanctis et beatis patribus qui nos praecesserunt, suscepti ac confirmati atque adeo nobis traditi sunt sanctorum et gloriosorum apostolorum nomine LXXXV canones [...]". Trullo c. 2, JOANNOU, CCO, 120-121; MANSI, 11, 939.

The Council in Trullo was also accepted as the basis for the new Oriental Code, together with the seven ecumenical councils. Pope JOHN PAUL II has mentioned the Council in Trullo in Sacri canones, by which he promulgated the Oriental Code. See AAS 82 (1990) 1034.

³³ Cf. D. SALACHAS, "Il principio della struttura sinodale delle Chiese orientali nella legislazione canonica antica", Nicolaus 2 (1978) 230.

^{34 &}quot;Episcopos gentium singularum scire convenit, quis inter eos primus habeatur, quem velut existiment et nihil amplius praeter eius conscientiam gerant, quam illa sola singuli, quae paroeciae propriae

The ninth canon of the Antiochian synod (341) reiterates substantially the thirty-fourth Apostolic canon and establishes in clearer terms the conciliar principle:

It behaves the bishops of every province to acknowledge the bishop who presides in the metropolis, and who has to take thought for the whole province: because all men of business come together from every quarter to the metropolis. Wherefore it is decreed that he has precedence in rank, and that the other bishops do nothing extraordinary without him. (according to the ancient canon which prevailed from the times of our Fathers) or such things only as pertain to their own particular parishes and the districts subject to them. For each bishop has authority over his own parish, both to manage it with the piety which is incumbent on every one, and to make provision for the whole district which is dependent on his city; to ordain presbyters and deacons; and to settle everything with judgment. But let him undertake nothing further without the bishop of the metropolis; neither the latter without the consent of others. 35

In a few simple words these canons affirm the conciliar power in the Church as a whole, and define in particular the rights, the duties and the mutual relationships of the bearers of this power - the bishops within the local Church. This canon originating in the apostolic period is still applicable for problems which have surfaced to the forefront in this century, such as the relationship between the diocesan bishops and collegial structures. This canon establishes equilibrium between the autonomy of the diocesan bishops within the diocese and the power of councils or synods for the common good of the whole Church on the provincial, regional or national levels. An analysis of the canon reveals the following important aspects of synodal structure.

et villis, quae sub ea sunt competunt. Sed nec ille praeter omnium conscientiam faciat aliquid; sic enim unanimitas erit et glorificabitur deus per Christum in spiritu sancto". MANSI, 1, 35; JOANNOU, CSP, 24; PERCIVAL, 596.

³⁵ PERCIVAL, 112; MANSI, 2, 1311; JOANNOU, CSP, 110-111.

³⁶ R. POPTODOROV, "Protos and Conciliarity", Kanon 9 (1989) 212.

1.3.1. Collegial Action

For all affairs that go beyond the immediate territorial jurisdiction of a bishop, the decision must be a collegial one. so that he who is the first or the head among the bishops does not act without the others, and the others do not act without him. This is the norm and criterion of action for the bishops. The heads of the local Churches, namely the bishops, must gather together to treat in common those questions which go beyond the immediate interest of an ecclesial local community that is, the diocese. Therefore, any question of general interest such as discipline, doctrine or liturgy must be deliberated in the assembly of bishops. None of the bishops, not even the head or protos, can decide alone questions regarding the whole province. 37 That which concerns all shall be decided collegially by all. Thus "through the enactments of the thirty-fourth Apostolic canon a balance is derived in the relations of bishops with the metropolitan; mutual respect for them is preserved. and at the same time the co-responsibility of all the bishops for the administration and pastoral care of the entire Church is emphasized".38 Only on the basis of common consent, unanimity and unity of action of the regional bishops, namely, the episcopal synod together with the protos and reciprocally the regional protos together with the episcopal synod, can the supreme and truly conciliar power be exercised. 39

³⁷ Cf. the commentary of BALSAMON, PG 137, col. 106-107; DUPREY, "The Synodical Structure", 154; D. SALACHAS, "Il principio della struttura sinodale", 230; "L'istituzione patriarcale e sinodale nelle Chiese orientali cattoliche", Euntes Docente 43 (1990) 247; J. D. ZIZIOULAS, Being as Communion: Studies in the Personhood and the Church, London 1985, 135-136; D. PAPANDREOU, "Die Stellung des Ersten in der orthodoxen Kirche", Kanon 9 (1989) 13-14; A. SCHMEMANN, "La notion de primauté dans l'ecclésiologie orthodoxe", in La primauté de Pierre dans l'Église orthodoxe, Neuchâtel 1960, 138-139; L. WALDMÜLLER, "Das Konzil im Verständnis der Ostkirche", in W. Brandmüller, ed., Synodale Strukturen der Kirche, Donauwörth 1977, 142-143; R. METZ, "L'institution synodale d'après les canones locaux", Kanon 11 (1974) 158.

³⁸ P. RODOPOULOS, "Ecclesiological Review of the Thirty-Fourth Apostolic Canon", Kanon 4 (1980) 93.

³⁹ R. POPTODOROV, "Protos and Conciliarity", 212.

1.3.2. The Position of the Head

The canon recognizes the necessity of a head or protos in every province for the co-ordination of episcopal action. According to the canon it is necessary that the bishops of each nation or province know who is the first among them, to be considered as their head, namely, the metropolitan.⁴⁰ They should do "nothing of major consequence without his consent" - that means the initiatives and decisions that concern the whole province or nation. 41 Therefore, the norm is that the bishops shall do nothing regarding common affairs of the province or nation without the consent of the metropolitan: similarly the metropolitan should not decide anything alone without the consensus of the bishops of the province in matters regarding the whole province. In other words, real coresponsibility and just equilibrium between the bishops and the metropolitan are manifested in the synodal system of a local Church.

The assembling of the synod and decision-making with the consent and presence of the protos - "the bishops of each nation are to do nothing without his consent" - does not mean that the decisions of a local synod, made by majority vote, are subject to the approval or rejection of the protos, but that the subjects of general concern in a metropolitan province and especially the election of bishops are discussed in the synod in common and decisions are made there, always with the first ranking bishop of the metropolis presiding. It is not possible for the bishops without the protos to convene a synod, hold a discussion or make a decision, nor for the protos without

Balsamon in his commentary indicates that the "head" is the consecrating bishop. Cf. BALSAMON PG 137, col. 106. From the canons of other synods it is clear that the consecrating bishop is the metropolitan, the head of the province. See c. 9 of Antioch, c. 4 of Nicaea I, c. 6 of Sardica and cc. 34 and 56 of Carthage.

⁴¹ See the commentary of ZONARUS in PG 137, col. 107; E. LANNE, "Un esempio classico: il sinodo come stile di vita nella Chiesa ortodossa d'oriente", in A. Mondadori ed., *Crisi del potere nella Chiesa e risveglio comunitario*, Verona 1969, 246.

the synod of bishops to decide or to act upon subjects concerning the entire province. 42

1.3.3. The Internal Autonomy of Each Eparchy or Diocese

Canon thirty-four does not hinder the autonomy of each bishop in his own diocese. Each bishop is free to deal with the affairs of his own diocese and of the regions belonging to it. According to the ninth canon of Antioch:"[...] For each bishop has authority over his own parish, both to manage it with the piety which is incumbent on every one, and to make provision for the whole district which is dependent on his city: to ordain presbyters and deacons; and to settle everything with judgment". He can decide without the consent of the metropolitan and other bishops all matters that belong to his diocese. Thus questions that pertain to a local Church or eparchy belong to the responsibility of each bishop, for which he depends neither on the synod nor on the head; the Apostolic Canon guarantees above all the internal autonomy of the diocese or eparchy in its internal operation; on the other hand. its operation outside belongs to the responsibility of the synod. The relationship of the head of the synod with other members is defined by canon thirty-four as reciprocal interdependence in such a way to protect the equilibrium between the local Church and the supra-episcopal structure. This metropolitan system protects the Church from a false pyramidal type of hierarchical structure. The idea of the head of the synod does not intend to subject the local Church to a supra-episcopal structure, but on the contrary prevents a similar pretext or claim. He is not the one at the top of a pyramid, but the bishop of a Church and must serve the communion of the local Churches. 43 In short, the synod or metropolitan should

P. RODOPOULOS, "Ecclesiological Review of the Thirty-Fourth Apostolic Canon", 94; cf. also R. POPTODOROV, "Protos and Conciliarity", 212-213.

⁴³ Cf. P. RODOPOULOS, "Ecclesiological Review of the Thirty-Fourth Apostolic Canon", 95-98; D. PAPANDREOU, "Die Stellung des Ersten", 13-14; SALACHAS, "Il principio della struttura sinodale", 232.

not have authority to intervene in the internal affairs of a diocese except in so far as these affairs affect the life of other local Churches in an essential and direct wav.⁴⁴

1.3.4. The Glorification of God

The conclusion of the canon reads: "for so there will be unanimity and God will be glorified through Christ in the Holv Spirit". There exists a profound relationship between the collegial action of bishops in harmony and the glorification of God. The synodal life of the Church is therefore a testimony of the Holv Trinity, who is the perfect communion. From the principle of conciliar collegial action there results a consequence of the spiritual order: the communal manner of the action of the bishops in harmony reflects the communion and love that exists in the Trinity and becomes an example for clergy and the Christian faithful; by the same fact, the synodal action is an act of glory to the Trinity.45 Therefore. synods or councils cannot be considered primarily as a means of power and government or as a means of the majority to suppress the minority, but it is the manifestation of the communion or koinonia of the bishops of a Church and thus an act of glory to God. This canon reminds us of the basic principle that is held in high esteem in the whole Church: namely the "organizational structures and canonical institutions are in service of communion, and their purpose is nothing but the realization of the supreme end of the Church, namely the salus animarum and the glorification of God".46

In short, the Apostolic Canon thirty-four constitutes the fundamental basis and cornerstone of the synodal regime and

Cf. J. D. ZIZIOULAS, "The Institution of Episcopal Conferences: An Orthodox Perspective", The Jurist 48 (1988) 378.

⁴⁵ Cf. the commentary of ZONARUS in PG 137, col. 107; D. SALACHAS, "Il principio della struttura sinodale", 230; "L'istituzione patriarcale e sinodale", 247-248; E. LANNE, "Un esempio classico: il sinodo come stile di vita", 247; R. METZ, "L'institution synodale d'après les canones locaux", 158.

⁴⁶ P. PALLATH, "Liturgy Makes the Church: Towards a Catholic Sacramental Ecclesiology", in P. Pallath ed., Church and Its Most Basic Element, Rome 1995, 89.

organization of the Oriental Churches and has influenced greatly the Oriental theology of the Church. This canon enjoys, especially in Orthodox thought, a role of prime importance and serves as the basis of the principle of conciliarity as well as being one of the fundamental norms of ecclesial life. 47 Whatever be the historicity and authenticity of the thirty-fourth Apostolic Canon, it envisages a valid criterion for collegial action, that could even resolve the much debated problem in the Latin Church; namely, the autonomy of the diocesan bishops and the authority of the episcopal conference. Therefore, the principle enunciated by this canon is valid also for the Latin Church.

2. The Necessity of Local Synods and the Obligation of Bishops and Metropolitans

Considering the importance of the local episcopal bodies for the life of the Church, the early synods made sufficient regulations for their canonical convocation and functioning. Already the Apostolic Canon thirty-seven ordered that "let there be a meeting of bishops twice a year, and let them examine among themselves the decrees concerning religion and settle the ecclesiastical controversies which may have occurred". In line with this Apostolic Canon, the ecumenical Council of Nicaea I (325) established a clear norm for the celebration of provincial synods twice a year in order to deal with the legislative, judicial and administrative problems of the province:

⁴⁷ E. LANNE, "Un esempio classico: il sinodo come stile di vita", 245-247; S. HARKIANAKIS, "Über die gegenwartige Situation der orthodoxen Kirchen", Kyrios 6 (1966) 229-230; J. MEYENDORFF, Orthodoxie et catholicité, Paris 1965, 149; A. SCHMEMANN, "La notion de primauté", 138-139; J. D., ZIZIOULAS, Being as Communion, 135; P. L'HUILLIER, "Collégialité et primauté, Réflexions d'un orthodoxe sur les problèmes historiques", in La collégialité épiscopale, Unam Sanctam 52 (1965) 331-334; Y. CONGAR, "Autonomie et pouvoir central dans l'Église vus par la théologie catholique", Kanon 4 (1980) 140-141; R. POPTODOROV, "Protos and Conciliarity", 212-213; P. RODOPOULOS, "Ecclesiological Review of the Thirty-Fourth Apostolic Canon", 92-99.

⁴⁸ PERCIVAL, 596; JOANNOU, CSP, 26; MANSI, 1, 37.

[...] Accordingly, in order that there may be proper opportunity for inquiry into the matter, it is agreed that it would be well for synods to be held each year in each province twice a year. [...]The synods shall be held at the following times: one before Lent, so that, all pettiness being set aside, the gift offered to God may be unblemished; the second after the season of autumn.⁴⁹

Since the council specifically established the celebration of synods twice a year, it is also clear that the metropolitan who is the head of the province has the obligation to convoke the synod, while the bishops of the province have a likewise serious obligation to participate.

Based on the regulation of the Council of Nicaea, canon twenty of the synod of Antioch (341) prescribed the convocation of synods twice each year for the settlement of disputes and other problems. Dagain, canon nineteen of the Council of Chalcedon (451), due to some provinces not holding synods and thus neglecting needed reformation and renewal in ecclesiastical matters, strongly advocated the convocation of synods twice a year, in every province, in the place determined by the metropolitan. The canon reads as follows:

We have heard that in the provinces the synods of bishops prescribed by canon law are not taking place, and that as a result many ecclesiastical matters that need putting right are being neglected. So the sacred synod decrees that in accordance with the canons of the fathers, the bishops in each province are to foregather twice a year at a place approved by the bishop of the metropolis and put any matters arising to rights. Bishops failing to attend who enjoy good health and are free from all unavoidable and necessary engagements, but stay

⁴⁹ Council of Nicaea, c. 5, TANNER, DEC 1, 8; ALBERIGO, COD, 7; JOANNOU, CCO, 27-28.

^{50 &}quot;Propter utilitates ecclesiasticas et absolutiones earum rerum, quae dubietatem controversiamque recipiunt, optime placuit, ut per singulas quasque provincias bis in anno episcoporum concilia celebrentur [...]". JOANNOU, CSP, 120-121; MANSI, 3, 1315; PERCIVAL, 118.

at home in their own cities, are to be fraternally rebuked.⁵¹

This canon clearly shows the synodal consciousness of the Fathers, who consider the absence of synods equivalent to neglect of ecclesiastical affairs. Without synods, there is no renewal or life in the Church. The canon also emphasizes the special role of the metropolitan in the celebration of a synod and the grave obligation of bishops who are not hindered by a just impediment to participate.

The Council in Trullo (692) confirmed the decrees of the other councils concerning the convocation of provincial synods every year. As we have accentuated above, according to the early councils, synods should be held twice a year. However, if metropolitans cannot hold synods twice a year because of grave inconveniences, the Council in Trullo stipulates that by all means at least one synod should be held in every province between the holy feast of Easter and the month of October in the place determined by the metropolitan.⁵² It also prescribes the fraternal reprobation of bishops who are absent from synods without any serious reason.

Concerning the convocation of local synods, the Council of Nicaea II (787), again reminds us of the ancient canons which demand the assembly of bishops twice a year, but in accordance with the eighth canon of Trullo decrees for the compulsory convocation of the local synod at least once a year, even if there are inconveniences. The canon states:

⁵¹ Chalcedon c. 19; TANNER, DEC 1, 96; ALBERIGO, COD, 72; JOANNOU, CCO, 84-85.

^[...] canonem quoque renovamus, qui iubet, 'uniuscuiusque provincae episcoporum synodos quotannis fieri synodus, ubi metropolitanus episcopus aptius esse duxerit'. Quoniam autem propter barbarorum excursiones et quasdam alias incidentes causas, non possunt ecclesiarum praesides synodos bis in anno facere, visum est ut omnino semel in anno propter emergentes, ut saepe evenit, ecclesiasticas quaestiones praedictorum episcoporum synodus a sancto paschae festo et usque ad mensis octobris finem cuiusque anni, in loco quem, ut supradictum est, metropolitanus episcopus probaverit [...]". Council in Trullo c. 8, JOANNOU, CCO, 135-136; MANSI, 11, 946; PERCIVAL, 396.

Although there is indeed a canon which says, "In each province the canonical investigations should take place twice yearly by means of a gathering of the bishops," because of the trouble and because those attending the meetings lack the resources for such journeys, the holy fathers of the sixth synod decreed, "they should be held in any case and despite all excuses, once a year, and all that is incorrect should be put right". We also renew this canon, and should a ruler be found who prevents its observance, let him be excommunicated; however if one of the metropolitan bishops neglects its fulfilment, let him be subject to canonical penalties, unless it is a case of necessity, constraint or some other reasonable cause.⁵³

This canon does not intend to undermine the importance of synods, but stipulated only that it would be better to convoke at least one synod rather than none. The importance of synods in the life of the Church is such that it orders the excommunication of those who hinder the synods, including princes, and prescribes canonical penalties to those metropolitans who neglect to convoke the synods. Synods are necessary for the correction of mistakes and to guard the "divine and life-giving laws of God" with all attention and grave thought.

The role of the Metropolitan was very important in the celebration of the synods of the province. It is the metropolitan who convoked the synods, determined the place of its meeting and ensured its proper functioning in accordance with the tradition and the canons of the ecumenical councils. ⁵⁴ He presided over the synodal proceedings and promulgated the synodal decisions in the name of all the bishops of the province. ⁵⁵ The responsibility of the metropolitan regarding the convocation of synods is very clear in canon six of Nicaea II, which prescribed canonical penalties for a metropolitan

Nicaea II c. 6; TANNER, DEC 1, 143-144; ALBERIGO, COD, 119-120; JOANNOU, CCO, 258-259.

⁵⁴ Cf. Apostolic Canon 37; Nicaea I c. 5; Chalcedon c. 19; Antioch c. 20; Trullo c. 8; Carthage (419) c. 76.

⁵⁵ Cf. R. POPTODOROV, "Protos and Conciliarity", 210.

who neglected to convoke the synod at least once a year. In short, the metropolitan's leadership and guidance unquestionably maintained the agreement, harmony and unanimity among the bishops of the province.⁵⁶

3. Membership in Ancient Councils and Synods

Non-episcopal participation is excluded from the synod according to the tradition of the undivided Church. In all the ancient local synods on which this study is based, only bishops participated, though their exact number is uncertain. In the Synod of Ancira (314) about a dozen bishops from the provinces of Syria and Asia Minor were present.⁵⁷ In the historical note given by Zonarus and Balsamon as a prefix to the canons of the Synod of Neocaesarea (315), we read: "In this synod the Holy Fathers gathered together [...] adopted canons for the establishing of ecclesiastical order as follow".58 The same synod is entitled, "The canons of the Holy and Blessed Fathers who Assembled at Neocaesarea [...]". 59 In the beginning of the synodal letter of the Synod of Gangra, we see a list of bishops who participated in the Synod. Then the letter begins thus: "for as much as the most Holy Synod of Bishops (sancta synodus episcoporum) assembled on account of certain necessary matters of ecclesiastical business in the Church of Gangra [...]".60 Before the enumeration of the canons we find the title, "The canons of the Holy Fathers assembled at Gangra, which were set forth after the Council of Nicaea".61

The synodal letter of the Synod of Antioch states: "the holy and most peaceful synod which has been gathered together in Antioch [...] to our like-minded and holy fellow Ministers in every province health in the Lord [...] Wherefore that which after much examination and investigation, was

J. HAJJAR, "The Synod in the Eastern Church", 31.

⁵⁷ Cf. PERCIVAL, 62; JOANNOU, CSP, 54.

⁵⁸ Cf. PERCIVAL, 78.

⁵⁹ PERCIVAL, 79; MANSI, 2, 540.

⁶⁰ Cf. PERCIVAL, 91; JOANNOU, CSP, 85-86; MANSI, 2, 1096-97.

⁶¹ PERCIVAL, 92; MANSI, 2, 1096.

unanimously agreed upon by us bishops [...]".⁶² The canons of the Synod of Laodicea are entitled, "The Canons of the Synod held in the City of Laodicea, in Phrygia Pacatiana, in which many <u>Blessed Fathers</u> from diverse provinces of Asia were gathered together".⁶³ Similarly in the Synod of Carthage, 217 bishops from different provinces of Africa came together. Therefore, some versions of the canons of Carthage carry the title, "The Canons of the 217 Blessed Fathers who assembled at Carthage".⁶⁴

From expressions such as "the Holy Fathers", "the most Holy Synod of Bishops", "Blessed Fathers", and "unanimously agreed up on by us Bishops", it is evident that only bishops participated in the ancient local synods. We see such expressions also in other councils which approved and ratified the canons of these local synods. The first canon of the ecumenical Council of Chalcedon states: "We have deemed it right that the canons hitherto issued by the saintly fathers at each and every synod should remain in force". 65 According to the second canon of the Council in Trullo "it has seemed good to this holy council, that the eighty-five canons, received and ratified by the holy and blessed fathers before us [...] But we set our zeal likewise upon all the other holy canons set forth by our holy and blessed Fathers, that is, by the 318 holy God-bearing Fathers assembled at Nice, and those at Ancyra, further those at Neoceaesarea and likewise those at Gangra. and besides, those at Antioch in Syria: those too at Laodicea in Phrygia [...]".66

During the codification process of Oriental Canon Law, the Secretary of the Pontifical Commission, Ivan Zuzek made clear that in the first seven ecumenical councils, and in the important provincial synods which played a unique role in Oriental canonical legislation, namely the synods of Ancyra, Gangra, Neocesarea, Antioch, Laodicea, Carthage,

⁶² PERCIVAL, 107; JOANNOU, CSP, 102-103; MANSI, 2, 1306.

^{62.} PERCIVAL, 125; JOANNOU, CSP, 127 & 130; MANSI, 2, 564.

⁶⁴ PERCIVAL, 441; JOANNOU, CSP, 190 & 196.

⁶⁵ TANNER, DEC 1, 87; ALBERIGO, COD, 63; JOANNOU, CCO, 69.

⁶⁶ PERCIVAL, 361; JOANNOU, CCO, 120-121; MANSI, 11, 939.

Constantinople (394), only the bishops participated, though their numbers varied.⁶⁷ Similarly P. Hinschius in his esteemed study about different kinds of councils and synods in the history of the Church concludes that in principle, only bishops participated in the synods with deliberative vote.⁶⁸ In the Study called, "The importance of the Conciliar Process in the Ancient Church for the Ecumenical Movement", published by the World Council of Churches in 1968, appeared the following statement regarding membership in the ancient synods:

A mark of the councils of the ancient Church was that they were composed of bishops. Eusebius reports meetings to combat the Montanists which may have included bishops and laymen. The later synods and councils were assemblies of bishops, This is closely related to the however. understanding of the bishop's office as it had developed at that time. Bishops received the charisma and the task of protecting the truth in the Church entrusted to them. Therefore it is natural that they were the ones who met in synods and councils. They represented their church at the synod and stood not only for themselves but also for the whole Church. Of course, theologians who were priests, deacons or laymen also took part in several councils, but only in an advisory capacity.⁶⁹

From our analysis it is evident that in the early local synods only bishops who represented their Church participated at the synod and stood not only for themselves but also for the whole Church. If some non-episcopal experts participated in some synods which treated doctrinal and disciplinary questions, they did so only in an advisory capacity. As we shall see, non-episcopal participation was completely excluded from the synods which conducted the election of bishops.

⁶⁷ Cf. Nuntia 7 (1978) 21.

⁶⁸ Cf. P. HINSCHIUS, System des Katholischen Kirchenrechts mit besonderer Rücksicht auf Deutschland, vol. 3, Berlin 1883, 474, 499-500, 516 & 544.

⁶⁹ Cf. WCC, Councils and the Ecumenical Movement, Geneva 1968, 13; J. D. ZIZIOULAS, "The Development of Conciliar Structures", 40-41.

4. Major Powers of the Local Synods or Councils

The local episcopal bodies in the early Church enjoyed sufficient electoral, judicial, legislative, and administrative powers. We spotlight the major synodal powers analyzing the canons of the ecumenical councils and important local synods of the early Church.

4.1. Election of Bishops

4.1 1. Ecumenical Council of Nicaea I (325)

Regarding the election of bishops, the first canonical legislation may be seen in the fourth canon of the first Council of Nicea (325). The canon states:

It is by all means desirable that a bishop should be appointed by all the bishops of the province. But if this is difficult because of some pressing necessity or the length of the journey involved, at least three come together and perform the ordination, but only after absent bishops have taken part in the vote and given their written consent. But in each province the right of confirming the proceedings belongs to the metropolitan bishop.⁷⁰

According to the canon, in principle, the appointment and consecration of a bishop are the collegial or synodal action of all the bishops of the province. If all the bishops cannot be present because of some pressing necessity or a just impediment, at least three can come together and perform the ordination, but the written consent of the absent bishops is necessary. The absent bishops are obliged to send their votes to the metropolitan through letters.

This canon also emphasizes the important role of the metropolitan in the appointment and consecration of a bishop. The subsequent ratification of the election consists in the imposition of hands and in the consecration of the newly

⁷⁰ TANNER, DEC 1, 7; JOANNOU, CCO, 26; ALBERIGO, COD, 6-7.

elected under the leadership of the metropolitan of the province.⁷¹ Canon six further regulates that:

If anyone is made bishop without the consent of the metropolitan, this great synod determines that such a one shall not be a bishop. If however two or three by reason of personal rivalry dissent from the common vote of all, provided that it is reasonable and in accordance with the church's canon, the vote of majority shall prevail. 72

Therefore, nobody can become a bishop without the consent of the metropolitan and, in an event of conflict, the vote of majority shall prevail. The general principle is to arrive at a common consensus regarding the worthy candidate for episcopacy. But it is possible that two or three may dissent from "the common vote of all" because of personal reasons. In that case the vote of majority shall prevail if their decision is reasonable and in accordance with the Church's canons. The plurality of bishops in the episcopal consecration is a sign of unity and communion, and a testimony of the identity of the local Church with other Churches and with the one universal Church of God. 73

⁷¹ Cf. Commentaries of Balsamon and Zonarus, PG 137, col. 235; C. HEFELE; Histoire des conciles, I, 1, 543-546; J. HAJJAR, Le synode permanent dans l'Église Byzantine des origines au XI siecle, OCA 164, Rome 1962, 31-32; L. WALDMÜLLER, "Das Konzil im Verständnis der Ostkirche", 144; C. VOGEL, Unité de l'Église et pluralité", 617; G. ALBERIGO, Storia dei concili ecumenici, Queriniana-Brescia 1990, 38; I. ORTIZ DE URBINA, Nicée et Constantinople, Paris 1963, 99; For the historical background and detailed analysis of this canon, L. MORTARI, Consacrazione episcopale e collegialità: La testimonianza della Chiesa antica, Firenze 1969, 51-64; cf. Apostolic Canon 1 and the Synod of Ancyra (314) c. 9.

⁷² TANNER, DEC 1, 8-9; ALBERIGO, COD, 8; JOANNOU, CCO, 29.

⁷³ Cf. L. MORTARI, Consacrazione episcopale e collegialità, 143 & 147: A. SCHMEMANN, "La notion de primauté", 133 & 138; J. D. ZIZIOULAS, Being as Communion, 155-157; M. J. LE GUILLOU, "L'expérience orientale de la collégialité épiscopale et ses requêtes", Unam Sanctam 52 (1965) 168-169.

4.1.2. The Synod of Antioch (341)

The legislation of the Council of Nicaea concerning the canonical election and ordination of bishops is accepted and further developed by the nineteenth canon of the Synod of Antioch. The canon decrees:

A bishop shall not be ordained without a synod and the presence of the metropolitan of the province. And when he is present, it is by all means better that all his brethren in the ministry of the Province should assemble together with him; and these the metropolitan ought to invite by letter. And it were better that all should meet; but if this be difficult. it is indispensable that a majority should either be present or take part by letter in the election, and that thus the appointment should be made in the presence, or with the consent, of the majority; but if it should be done contrary to these decrees, the ordination shall be of no force. And if the appointment shall be made according to the prescribed canon, and any should object through natural love of contradiction, the decision of majority shall prevail.74

This canon again strongly emphasizes the necessity of the synod and the presence of the metropolitan for the election and ordination of a bishop. In the case of an election, the metropolitan has to convoke all the bishops of the province by an official letter. All the bishops of the province should be present for the election if possible, but the participation of the majority is indispensable, either in person or by letter. Thus the appointment is made in the presence or with the consent of the majority. This canon adds to the fourth canon of the Council of Nicaea that an election held in violation of the provisions of this decree is null and void, and in an instance of contradiction the decision of the majority shall prevail. This canon provides evidence of the development of the synodal system which, in line with canon thirty-four of the

⁷⁴ Antioch c. 19; PERCIVAL, 117; JOANNOU, CSP, 119; MANSI 2, 1315.

⁷⁵ See the commentary of BALSAMON, PG 137, col. 1327.

Apostolic Canons and canon four of Nicaea, had given a greater degree of structure and definition.⁷⁶

Since the election and ordination of bishops are the exclusive competence of the local synod of bishops convoked and presided over by the metropolitan, lay people or a single bishop or even uncanonical gathering of bishops have no right to elect or nominate bishops. According to canon twenty-three. "It shall not be lawful for a bishop, even at the close of life, to appoint another as successor to himself; and if any such thing should be done, the appointment shall be void. But the ecclesiastical law must be observed, that a bishop must not be appointed otherwise than by a synod and with the judgment of the bishops, who have the authority to promote the man who is worthy, after falling asleep of him who has ceased from his labours". 77 Canon sixteen stipulates that if a bishop without a see takes up the governance of an eparchy, without a full synod, he shall be cast out even if all the people over whom he has usurped jurisdiction choose him. A full synod in which the metropolitan is present shall resolve such problems.78

4.1.3. Synods of Laodicea (343/381) and Carthage (419)

The local synods of Laodicea and Carthage also evidence the reception of the canonical procedure of the election of bishops, as established by the Council of Nicaea I. According to twelfth canon of Laodicea, "bishops are to be appointed to the ecclesiastical government by the judgment of the metropolitans and the neighbouring bishops".⁷⁹ Though

⁷⁶ P. DUPREY, "The Synodical Structure", 157; Cf. also N. AFANASSIEFF, "L'Église qui préside dans l'amour", in La primauté de Pierre dans l'Église orthodoxe, Neuchâtel 1960, 19-21.

⁷⁷ PERCIVAL, 119; JOANNOU, CSP, 122-123; MANSI 2, 1318.

⁷⁸ PERCIVAL, 116; JOANNOU, CSP, 117; MANSI, 2, 1315; Cf. Apostollic canon 76.

^{79 &}quot;Ut episcopi iudicio metropolitanorum et eorum episcoporum, qui circumcirca sunt, provehantur ad ecclesiasticam potestatem, hi videlicet, qui plurimo tempore probantur tam verbo fidei quam rectae conversationis exemplo". Laodicea c. 12, JOANNOU, CSP, 135; MANSI 2, 566; PERCIVAL, 131.

the name "synod" or council is not used here, it is evident that metropolitans together with their neighbouring bishops make decisions in local synods. Similarly, the Synod of Carthage (c. 13) reaffirms that for the election and ordination of a bishop, "the decrees of the ancients must be observed by us" and that "without the consent of the primate of any province even many bishops assembled together should not lightly presume to ordain a bishop". However, if the local synod cannot be assembled because of grave necessity, three bishops should ordain another bishop, with the authorization of the metropolitan.⁸⁰

4.1.4. The Second Synod of Arles (443)

The second synod of Arles accepts and confirms the procedure for the election and consecration of bishops, established by the precedent ecumenical councils and local synods. Canon five states: "Without the metropolitan, or his written permission, and without their comprovincial bishops no bishop is to be consecrated. The others (comprovincials) shall be requested to give their adhesion in writing. If a controversy arises respecting the election of a bishop, the metropolitan shall agree with the majority". Refering to the legislation of the ecumenical Council of Nicaea (canon 6) regarding the election of bishops, canon six of Arles decrees: "If any one is consecrated without the consent of the metropolitan, in accordance with the previous ordinance of the great Synod, he cannot be a bishop".

4.1.5 Ecumenical Councils of Nicaea II (887) and Constantinople IV (869-870)

The procedure for the election and ordination of bishops established by the first Council of Nicaea and received by the local synods, is again renewed and confirmed by the second Council of Nicaea (c. 3):

⁸⁰ Carthage c. 13; JOANNOU, CSP, 226-227; PERCIVAL, 448.

⁸¹ MANSI 7, 879.

⁸² MANSI 7, 879.

It is necessary that the person who is to be advanced to a bishopric should be elected by bishops, as has been decreed by the holy fathers at Nicaea in the canon that says "It is by all means desirable that a bishop should be appointed by all [the bishops] in the province. But if it is difficult because of some pressing necessity or the length of the journey involved let at least three come together and perform the ordination, but only after the absent bishops have taken part in the vote and given their written consent. But in each province the right of confirming the proceedings belongs to the metropolitan". 83

Again canon 22 of the fourth Council of Constantinople states: "This holy and universal synod declares and decrees, in agreement with earlier councils that the promotion and consecration of bishops should be done by means of an election and decision of the college of bishops [...]".84

4.1.6. Prohibition of the Intervention of Civil Authority

According to the doctrine of the ecumenical councils and provincial synods, the election of bishops is the exclusive competence of the synod of bishops of the province convoked and presided over by the metropolitan. The councils do not permit any outsiders to intervene in the election and ordination of bishops. The Apostolic Canon thirty prescribes even excommunication for a person who obtains episcopal dignity by the help of civil authority. The Council of Chalcedon (451) condemned those bishops who "contrary to the ecclesiastical regulations" approached the civil authorities

⁸³ TANNER, DEC 1, 140; ALBERIGO, COD, 116; JOANNOU, CCO, 250-251.

⁸⁴ TANNER, DEC 1, 182-183; ALBERIGO, COD, 158-159; JOANNOU, CCO, 333.

^{*}Si quis episcopus saeculis potestatibus usus ecclesiam per ipsas obtineat, deponatur, et segregentur omnes qui illi communicant". Apostolic Canon 30, JOANNOU, CSP, 21; MANSI, 1, 35; PERCIVAL, 595.

^{86 &}quot;Pervenit ad nos, quod quidam praeter ecclesiastica statuta facientes convolarunt ad potestates et per pragmaticam formam in duo unam provinciam diviserunt, ita ut ex hoc facto duo metropolitani esse videantur in una provincia. Statuit ergo sancta synodus de reliquo

and divided one province into two by imperial writ, thus becoming metropolitans.⁸⁶ Quoting Apostolic Canon thirty and the fourth canon of Nicaea I concerning the canonical procedure for the election of bishops, the second Council of Nicaea categorically states that "Any election of a bishop, priest or deacon brought about by the rulers is to be null and void".⁸⁷ Thus this canon severely prohibits the tendency of some to approach the civil authority to obtain ecclesiastical offices and at the same time implicitly excludes any civil intervention in the internal affairs of the Church. The fourth Council of Constantinople solemnly declares:

The apostolic and conciliar canons clearly forbid the nomination and consecration of bishops which have come about as a result of the power and intrigues of civil authorities. Therefore we declare and proclaim, in full agreement with them, that if any bishop has received his consecration through the manipulation and constraint of such persons, he should be deposed absolutely as one who has desired and consented to have the gift of God not from the will of God and ecclesiastical law and decree, but from human beings and through their machinations as a result of the prompting of carnal desire.⁸⁸

This canon confirms the apostolic and conciliar tradition concerning the nomination and consecration of bishops;

nihil ab episcopis tale temptari, alioquin qui hoc adnisus fuerit, amissioni gradus proprii subiacebit. Quaecumque vero civitates litteris imperialibus metropolitani nominis honore subnixae sunt, honore tantummodo perfruantur, et qui ecclesiam eius gubernat episcopus, salvis scilicet verae metropolis privilegiis suis". Chalcedon c. 12, TANNER, DEC 1, 93; ALBERIGO, COD, 69; JOANNOU, CCO, 79-80.

^{67 &}quot;Omnis electio a principibus facta episcopi aut prebyteri aut diaconi, irrita maneat secundum regulam quae dicit: 'Si quis episcopus saecularibus potestatibus usus, ecclesiam per ipsos obtineat, deponatur: et segregentur omnes qui illi communicant'. Oportet enim ut qui provehendus est in episcopum, ab episcopis eligatur; quemadmodum a sanctis patribus qui apud Nicaeam convenerunt in regula definitum est [...]". Nicaea II, c. 3, TANNER, DEC 1, 140; ALBERIGO, COD, 166; JOANNOU, CCO, 250-251.

⁸⁸ Constantinople IV, c. 12, TANNER, DEC 1, 175; ALBERIGO, COD, 151-152; JOANNOU, CCO, 314.

completely excludes civil intervention in these matters; prescribes deposition for those who have received their consecration through the manipulation and constraint of civil authorities; and indicates the theological reason for this discipline, namely that the gift of God is received not from human beings, but from the will of God.

4.1.7. Participation of the Laity in the Election of Bishops

Though the early councils absolutely prohibited the intervention of civil authority in the election of bishops, the participation of lay Christian faithful was not completely excluded. The fourth Council of Constantinople, after confirming the constant doctrine of the councils concerning the election and ordination of bishops, states:

This holy and universal synod declares and decrees. in agreement with earlier councils that the promotion and consecration of bishops should be done by means of an election and decision of the college of bishops. So it promulgates as law that no lay authority or ruler may intervene in the election or promotion of a patriarch, a metropolitan or any bishop, lest there be any irregularity leading to improper confusion or quarrelling, especially since it is wrong for any ruler or other lay person to have any influence in such matters. Rather he should be silent and mind his own business until the election of the future bishop has been completed with due process by the ecclesiastical assembly. But if any lay person is invited by the church to join in the discussion and to help with the election, he is permitted to accept the invitation with respect, if he so wishes. For in this way he may be able to promote a worthy pastor in a regular manner, to the benefit of his church. If any secular authority or ruler, or a lay person of any other status, attempts to act against the common agreed and canonical method in the Church, let him be anathema; this is to last until he obeys and agrees to what the church shows it wants concerning the election and appointment of its leader.89

⁸⁹ Constantinople IV, c. 22, TANNER, DEC 1, 182; ALBERIGO, COD, 158-159; JOANNOU, CCO, 333-334.

The canon categorically affirms that the election and consecration of bishops should be done by the college of bishops assembled in a synod in accordance with the "common, agreed and canonical method of election in the church". It absolutely prohibits the intervention or influence of civil authority or any other lay person in the election of bishops, and prescribes excommunication for anybody doing so. However, the participation of lay Christian faithful is not absolutely excluded. Though election is the exclusive competence of the bishops, lay people can join in the discussion and help with the election, if they are invited by the synod, offering their counsel and cooperation. In short, the lay Christian faithful could be consulted to establish the suitability of a priest for episcopal dignity.

From what we have seen above, the ancient canonical procedure for the election and ordination of bishops can be summarized as follows:

- 1. According to the common tradition of the Church, as established by the canons of the first ecumenical councils and important local synods, the only competent authority for the election of bishops was the local synod of bishops canonically convoked and presided over by the metropolitan.
- 2. The metropolitan played an important role in the election and consecration of the bishops of the province. In the case of a bishops' election, the metropolitan was obligated to convene all the bishops of the province, preside over the synod and supervise the faithful observance of the traditions and canonical discipline of the Church and finally, together with other bishops of the province, consecrate the newly elected bishop.⁹⁰
- 3. Since the election of bishops was the exclusive competence of the synod of bishops, the intervention of civil authority or any other lay person was absolutely prohibited.

⁹⁰ Cf. F. X. WERNZ & P. VIDAL, Ius Canonicum, vol. II, De Personis, Romae 1928, 548; D. SALACHAS, "Il principio della struttura sinodale", 233; E. EID, La figure juridique du patriarche, Rome 1963, 40; M. J. LE GUILLOU, "L'expérience orientale de la collégialité épiscopale", 170; I. ORTIZ DE URBINA, Nicée et Consantinople, 100.

4. However, the synod of bishops can seek the opinion of the lay Christian faithful in its attempt to verify the suitability of a candidate for episcopacy.

4.2. Judicial Power of the Local Episcopal Bodies

4.2.1. Council of Nicaea (325)

The Council in its fifth canon desired to foster uniformity of ecclesiastical discipline and ordered that the clergy or laity excommunicated by one bishop should not be accepted by others. The decisions of an individual bishop had the force of law, though his authority was not ultimate with respect to the ecclesiastical status of all members of his diocese. The only competent organ to reconsider cases of excommunication was the assembly of all bishops of the province, namely the synods and not just any single bishop. The synods enquired into the matter properly and either confirmed the excommunication on the basis of common consent or decided to pronounce a more lenient sentence. The canon decrees:

Concerning those, whether of the clergy or the laity. who have been excommunicated, the sentence is to be respected by the bishops of each province. according to the canon which forbids those expelled by some to be admitted by others. But let an enquiry be held to ascertain whether anyone has been expelled from the community because of pettiness or quarrelsomeness or any such ill nature on the part of the bishop. Accordingly, in order that there may be proper opportunity for inquiry into the matter, it is agreed that it would be well for synods to be held each year in each province twice a year, so that these enquiries may be conducted by all the bishops of the province assembled together, and in this way by general consent those who have offended against their own bishop may be recognized by all to be reasonably excommunicated, until all the bishops in common may decide to pronounce a more lenient sentence on these persons [...].91

⁹¹ TANNER, DEC 1, 8; ALBERIGO, COD, 7; JOANNOU, CCO, 27.

From this canon it is evident that although the decisions of the individual bishops had the force of law, the authority of the single bishops was no longer ultimate with respect to the ecclesiastical status of a member of his own Church 92 Provincial synods are some kind of supra-episcopal organ which can even reconsider the excommunication sentences pronounced by a single bishop in order that proper justice and harmony be ensured in the Church. As we have seen above, in accordance with Apostolic canon 34, the eparchial bishop has authority to deal with the internal affairs of a diocese: however, since excommunication of a person from one Church automatically means excommunication from all the other Churches, the provincial synod has authority to judge whether a certain excommunication should be sustained or not.93 The provincial synod was to investigate whether that excommunication was justified or if it was the result of partiality or arbitrariness of the bishop in question. Therefore, the provincial synods are higher courts of appeal for excommunicated Christians. Outside the provincial synod the Council does not allow any authority to control the judgment of bishops. One cannot attribute such a role to the metropolitan, but only to provincial synods. 94

4.2.2. The Synod of Antioch (341)

The Antiochian Synod promulgated many canons which deal with the judicial power of the local synods. The canons of this synod highlight the gradual development of a judiciary system which includes different instances of trial: bishop, provincial synod and higher synod.

Since the election and ordination of a bishop are the competence of the provincial synod, only this synod has the power to judge or depose bishops. According to canon three, a bishop who receives a priest deposed for causing ecclesiastical disorder can be punished by the synod as one who nullifies

⁹² Cf. J. D. ZIZIOULAS, "The Development of Conciliar Structures", 45.

⁹³ J. D. ZIZIOULAS, "The Institution of Episcopal Conferences", 378.

⁹⁴ J. HAJJAR, Le synode permanent, 32; cf. I. ORTIS DE URBINA, Nicée et Constantinople, 100.

the ecclesiastical laws.⁹⁵ Similarly, a bishop who proceeds irregularly to ordain a person, to appoint presbyters or deacons or to regulate ecclesiastical affairs outside the frontiers of his jurisdiction can be punished and even deposed by the provincial synod.⁹⁶ Irregularities and disorders caused by any bishop in matters of election, appointment or occupation of sees are resolved by the synod.⁹⁷ The power of the synod to depose bishops is also evident in canon twelve which sates that a bishop deposed by a synod shall not dare to trouble the emperor.⁹⁸ According to canon fifteen a bishop punished by the unanimous decision of all the bishops of a provincial synod cannot even appeal to a higher court.⁹⁹

The provincial synod, as we have seen above, is the first instance of trial for a bishop, but at the same time it functions as an appeal court for cases already adjudicated by episcopal courts. The presbyters, deacons or laity who have already been judged by the diocesan bishop and who think they were treated unjustly may resort to the provincial synod

⁹⁵ Antiochian Synod c. 3, JOANNOU, CSP, 106-107; PERCIVAL, 109; MANSI, 2, 1310.

[&]quot;Nullus episcopus ex alia provincia audeat ad aliam transgredi et ad promotionem ministerii aliquos in ecclesiis ordinare, licet consensum videantur praebere nonnulli, nisi litteris tam metropolitani quam ceterorum, qui cum eo sunt, episcoporum rogatus adveniat et sic ad actionem ordinationis accedat, si vero nullo vocante, inordinato more deproperet super aliquibus ordinationibus et ecclesiasticis negotiis ad eum. non pertinentibus conponendis, irrita quidem, quae ab eo geruntur, existant, ipse vero incompositi motus sui et inrationabilis audaciae subeat ultionem, ex hoc iam damnatus a sancto concilio". Antiochian Synod, c. 13, PERCIVAL, 109; JQANNOU, CSP, 114-115; MANSI, 2, 1314.

⁹⁷ Cc. 16-19, PERCIVAL, 116-117; JOANNOU, CSP, 117-119; MANSI, 2, 1315.

⁹⁸ PERCIVAL, 114; JOANNOU, CSP, 114; MANSI, 2, 1314.

[&]quot;Si quis episcopus de certis criminibus accusatus condemnetur ab omnibus episcopis eiusdem provinciae, cunctique consonanter eandem contra eum formam decreti protulerint, hunc apud alios nullo modo iudicari, sed firmam concordantium episcoporum provinciae manere sententiam". JOANNOU, CSP, 116; MANSI, 2, 1314-1315; PERCIVAL, 115.

and obtain its judgment.¹⁰⁰ Thus the Synod of Antioch reaffirms the fifth canon of Nicaea which for the first time attributed to the provincial synod the competence to reconsider the excommunication cases already judged by the diocesan bishops.

We have already seen that the provincial synod is the competent forum for the trial of bishops and if a real consensus is reached in the synod, its decision has juridical value. If all the bishops of a province are not unanimous in the judgment of a bishop (i.e., some pronouncing the accused innocent and others guilty) other bishops shall be called from the neighboring provinces to add their judgment and resolve the dispute. ¹⁰¹ In this instance we find the principle of collegial jurisdiction greater than that of provincial synod. Thus the Fathers of the Antiochian Synod perfect a discipline whose first outlines had been fixed by the Fathers of Nicaea.

According to canon twelve, if any presbyter or deacon deposed by his own bishop or any bishop deposed by a provincial synod can submit his case to a greater synod of bishops, he has to abide by the examination and decision made by this greater synod. 102 This certainly is a collegial jurisdiction broader than that of the regular provincial synod as proposed in canon fourteen (the participation of the bishops of the neighboring province), and even higher: it is extra or supra-provincial. 103 This synod seems to have been the assembly of the bishops of the various provinces of a region,

 ¹⁰⁰ Cc. 6 & 20, PERCIVAL, 111 & 118; JOANNOU, CSP, 109 & 120-121; MANSI, 2, 1311-1315.

^{101 &}quot;Si quis episcopus de certis criminibus iudicatur et contingat de eo provinciales episcopos disserere, cum, iudicatus, ab aliis innocens creditur, reus ab aliis extimetur: prototius ambiguetatis absolutione sanctae synodo placuit, ut metropolitanus episcopus a vicina provincia iudices alios convocet, qui controversiam tollant et per eos simul et provinciales episcopos, quod iustum visum fuerit, adprobetur". C. 14, JOANNOU, CSP, 115-116; MANSI, 2, 1314; PERCIVAL, 115.

¹⁰² C. 12, PERCIVAL, 114; JOANNOU, CSP, 114; MANSI, 2, 1314.

J. HAJJAR, Le synode permanent, 35; "Les origines du synode permanent et son institution conciliaire", POC 5 (1955) 124-125; cf. Commentary of Balsamon, PG 137, col. 1307-1311.

which later developed into the plenary synod or patriarchal synod of a Church. Normally, such a higher synod would be the supreme and final instance for judgements concerning an ecclesiastical province.

4.2.3. The Council of Sardica (343 or 344)

Canons three to five of the Council of Sardica recognize the right of a bishop condemned by the synod of his province for any matter to make an appeal to the Bishop of Rome. According to canon three "if perchance sentence be given against a bishop in any matter and he supposes his case to be not unsound but good, in order that the question may be reopened, let us, if it seem good to your charity, honour the memory of Peter the Apostle, and let those who gave judgment write to Julius, the Bishop of Rome, so that, if necessary, the case may be retried by the bishops of the neighbouring provinces and let him appoint arbiters; but if it cannot be shown that his case is of such a sort as to need a new trial, let the judgment once given not be annulled, but stand good as before". 104

Canon four states that if a bishop deposed by a provincial synod claims to have fresh matter in defense, a new bishop shall not be appointed in his see, unless the bishop of Rome judges and render a final decision. Hence, if a bishop makes an appeal to Rome, the judgment of the provincial synod is suspended until the decision of the Bishop of Rome. The provincial synod can appoint a new bishop in the place of the deposed one only after having received the final decision of the Bishop of Rome. Canon five speaks about the procedure of a second trial in case of an appeal to the bishop of Rome in the following manner:

If any bishop is accused, and the bishops of the same region assemble and depose him from his office, and he appealing, so to speak, takes refuge with the most blessed bishop of the Roman Church, and he be willing to give him a hearing, and think it right to renew the examination of his case, let him be

¹⁰⁴ PERCIVAL, 417; JOANNOU, CSP, 162-163; MANSI, 3, 7.

¹⁰⁵ PERCIVAL, 418; JOANNOU, CSP, 163-164; MANSI, 3, 7-10.

pleased to those fellow bishops who are nearest the province that they may examine the particulars with care and accuracy and give their votes on the matter in accordance with the word of truth. And if any one requires that his case be heard yet again, and at his request it seem good to move the bishop of Rome to send presbyters a *latere*, let it be in the power of that bishop, according as he judges it to be good and decides it to be right - that some be sent to be judges with the bishops and invested with his authority by whom they were sent. And be this also ordained. But if he thinks that the bishops are sufficient for the examination and decision of the matter let him do what shall seem good in his most prudent judgment. 106

In accordance with the canon in case of an appeal to Rome, the bishop of Rome can scrutinize the judgment of the local synod and either confirm the first judgment or if the scrutiny revealed irregularities, order that the process be taken up again. In the case of a new trial, he can either charge the bishops of the neighbouring province to make an accurate reexamination of the case or send some delegates who together with the bishops make a fresh judgment.¹⁰⁷ "According to the wording of Sardica's canons on appeals, the pope did not in fact represent a superior instance, in the strict sense, but only a 'quasi-instance of supplication,' as it has been well called, a sort of general supervision of the Church's synods".¹⁰⁸

According to the three canons of the Council of Sardica which we have examined, the legal procedure for the judgment

¹⁰⁶ PERCIVAL, 419; JOANNOU, CSP, 164-165; MANSI, 3, 10.

¹⁰⁷ Cf. H. J. SIEBEN, "Episcopal Conferences in Light of Particular Councils During the First Millennium", The Jurist 48 (1988) 43; H. LEGRAND, "Brève note sur le synode de Sardique et sur sa réception: Rome instance d'appel ou de cassation?" in La primauté romaine dans la communion des Églises, Paris 1991, 49. For a historical review of the Sardican canons, H. J. SIEBEN, "Sanctissimi Petri Apostoli memoriam honoremus. Die Sardicensischen Appellationskanones im Wandel der Geschichte" in Theologie und Philosophie 58 (1983) 501-534.

H. J. SIEBEN, "Episcopal Conferences in Light of Particular Councils", 43; H. LEGRAND, "Brève note sur le synode de Sardique", 5.

of the case of a bishop includes the following steps: 1) The first instance of trial for a bishop is the synod of bishops of the province. 2) The condemned bishop can make a supplication or an appeal to the bishop of Rome if he considers himself to be unjustly punished. 3) In the case of an appeal, the bishop of Rome can either confirm the judgment of the provincial synod or order for a new trial. 4) If he deems that a new trial is necessary, he can order the bishops of the neighbouring province to re-examine the case or send his own delegates who together with the bishops make a final judgment.

4.2.4. The First Council of Constantinople (381)

The sixth canon establishes clearly the competent forum for cases against bishops. The canon does not allow heretics, excommunicates or those who have been previously condemned or accused of some transgressions to bring any ecclesiastical charge against bishops. But if others "claim that they have some ecclesiastical charge to make against the bishop, the sacred synod commands that such persons should first lay the accusations before all the bishops of the province and prove before them the crimes committed by the bishop in the case. If it emerges that the bishops of the province are not able to correct the crimes laid at the bishop's door, then a higher synod of the bishops of that diocese, convoked to hear this case must be approached, and the accusers are not to lav their accusations before it until they have given a written promise to submit to equal penalties should they be found guilty of making false accusations against the accused bishop. when the matter is investigated [...]".109

The canon states that complaint against a bishop must first to be examined by the provincial synod. The provincial synod is thus the court of first instance for cases against bishops. If the plaintiff is not satisfied with the decision of the provincial synod, he can approach the court of appeal (second instance), namely the synod of the diocese. 110 In the

¹⁰⁹ TANNER, DEC 1, 33; ALBERÍGO, COD, 29; JOANNOU, CCO, 49-52.

The word "diocese" used in this canon shall not be understood in the modern sense of a territory administered by a bishop. Diocese

past, this diocesan synod was composed of the bishops of a civil administration of the Roman Empire, of which the province formed a part.¹¹¹

4.2.5. The Council of Chalcedon (451)

Canon nine, together with canon seventeen, determine the competent judicial forum for the cases against clerics and evidence the gradual evolution of the judiciary system of the Church. Canon nine reads as follows:

If any cleric has a case against a cleric, let him not leave his own bishop and take himself off to the secular courts, but let him first air the problem before his own bishop, or at least, with the permission of the bishop himself, before those whom both parties are willing to see act as arbiters of their lawsuit. If anyone acts in a contrary fashion, let him be subject to canonical penalties. If a cleric has a case to bring either against his own or against another bishop, let him bring the case to the synod of the province: If a bishop or a cleric is in dispute with the metropolitan of the same province, let him engage either the exarch of the diocese or the see of imperial Constantinople, and let him bring his case before him. 112

Canon seventeen states:

Rural or country parishes belonging to a church are to stay firmly tied to the bishops who have possession of them, and especially if they have continually and peacefully administered them over a thirty-year period. If, however, within the thirty years any dispute about them has arisen, or should arise, those who are claiming to be wronged are

signifies the administrative grouping of several provinces as introduced in the Roman Empire by Emperor Diocletian.

¹¹¹ See F. DVORNIK, The Idea of Apostolicity in Byzantium and the Legend of the Apostle Andrew, Cambridge-Massachusetts 1958, 19-20; Byzantium and the Roman Primacy, New York 1966, 35.

¹¹² Canon. 9, TANNER, DEC 1, 91; ALBERIGO, COD, 67; JOANNOU, CCO, 76-77.

permitted to bring the case before the provincial synod. If there are any who are wronged by their own metropolitan, let their case be judged either by the exarch of the diocese or by the see of Constantinople, as has already been said. If any city has been newly erected, or is erected hereafter, by imperial decree, let the arrangement of ecclesiastical parishes conform to the civil and public regulations. 113

- 1. Case Against a Cleric: If any cleric has a case against another cleric, he has to bring it first before his own bishop. It is also possible to bring the case before those whom both parties are willing to accept as arbiters of their law suit, with the permission of his own bishop. 114 According to Hefele, the word "at first" (prius) does not absolutely exclude a reference to secular judges especially if it is a civil affair, but regards civil intervention permissible only when the first attempt at an adjustment of the controversy by the bishops has not succeeded. 115 This was clearly recognized by Emperor Justinian in his Novella 123 caput 21.
- 2. Case Against a Bishop: If a cleric has a case against his own or another bishop, he has to bring the case to the provincial synod. Similarly, controversies among bishops are to be settled in the provincial synod (c. 17). This canon sanctioned and confirmed the canons of the Antiochian Synod and the first Council of Constantinople (381), which stipulated that bishops can be punished by the provincial synod. Though the primary intention of this canon is to fix the competent forum for the cases of bishops, we know from other canons that the provincial synod is also the appeal court for those cases first judged by a bishop. 117

¹¹³ TANNER, DEC 1, 95; ALBERIGO, COD, 71; JOANNOU, CCO, 82-83.

¹¹⁴ Cf. Council of Carthage, cc. 15, 20.

¹¹⁵ Cf. C. HEFELE, Histoire des conciles, II, 2, 792-795.

Antioch, cc. 14, 15; Constantinople (381), c. 6: cf. also Apostolic Canon 74; Carthage cc. 12, 19, 87.

¹¹⁷ Cf. Antioch, cc. 6, 20; Carthage, cc. 28, 125.

3. Case Against a Metropolitan: If a cleric or bishop has a dispute with the metropolitan of the same province, he can bring the case before the "exarch of the diocese". According to Hefele, there is no doubt that the expression "exarch" employed in canons nine and seventeen refers to those higher metropolitans who have several ecclesiastical provinces under them. 118 The supra-metropolitan power, namely the head of a "diocese" called "exarch" in canons nine and seventeen is later called patriarch. Emperor Justinian in his Novella 123 cap. 22 reproduced canon nine, substituting the expression "patriarch" for "exarch". 119 The Byzantine commentator. Aristenos, considers both terms identical. 120 Therefore. the competent forum for the trial of a metropolitan is the patriarchal synod. Meanwhile, the synod of the diocese or patriarchate under the presidency of the head of that diocese is normally the instance of appeal for a bishop or cleric condemned by a provincial synod. 121

¹¹⁸ C. HEFELE, Histoire des conciles, II, 2, 792-795; For an analysis of who is an exarch: E. HERMAN, "Chalkedon und die Ausgestaltung des konstantinopolitanischen Primats", in A. Grilmeier und H. Bacht, Das Konzil von Chalkedon, Band II, Würzburg 1953", 475-477; B. KURTSCHIED, Historia iuris canonici, Historia institutorum, Romae 1951, 127.

^{119 &}quot;Si qui vero sanctissimorum episcoporum eiusdem synodi dubitationem aliquam ad invicem habeant sive pro ecclesiastico iure sive pro aliis quibusdam rebus, prius metropolita eorum cum aliis de sua synodo episcopis causam iudicet, et si non ratum habuerit utraque pars quae judicata sunt, tunc beatimus patriarcha dioceseos illius inter eos audiat, et illa determinet quae ecclesiasticis canonibus et legibus consonant, nulla parte sententiae eius contradicere valent. Si autem et a clero aut alio quocumque aditio contra episcopum fiat propter quamlibet causam, apud sanctissimum eius metropolitam secundum sacras regulas et nostras leges causa iudicetur, et si quis iudicatis contradixerit, ad beatissimum archiepiscopum et patriarcham dioceseos illius referatur causa, et ille secundum canones et leges huic praebeat finem. Si vero contra metropolitam talis auditio fiat ab episcopo aut clerico aut alia quacumque persona, dioceseos illius beatissimus patriarcha simili modo causam iudicet[...]". Corpus Iuris Civilis, pars III, Novella 123, caput 22.

¹²⁰ Commentary of Aristenos, PG 137, col. 419.

¹²¹ Cf. Antioch, c. 12; Constantinople (381) c. 6; P. P. JOANNOU, "Pape, concile et patriarches dans la tradition canonique de l'église

4. The See of Imperial Constantinople: According to some scholars, canons nine and seventeen attribute a great privilege to the See of Constantinople: any bishop or clergyman might in the first instance bring his case before the bishop of Constantinople if the defendant were a metropolitan. 122 Thus, with the Council of Chalcedon, the See of Constantinople emerged as the first See among the other Oriental Churches with the right to receive the cases of metropolitans and appeals from the entire Orient within the Roman Empire. This was a parallel with Rome in favor of which the Council of Sardica had declared similar rights. 123 J. Haiiar sees in these two canons the confirmation of the permanent synod of Constantinople by an ecumenical council. So the permanent synod was not only an appeals court for the whole Orient, but also the ordinary tribunal for cases which involved the metropolitans. 124

For the dioceses of Pontus, Asia and Thrace, the choice between the "exarch of the diocese or the See of imperial Constantinople" was impossible because they never had an ecclesiastical exarch ad instar the diocese of the Orient and Egypt (Alexandria and Antioch). Therefore, it seems that the main intention of this canon was to decide the competent forum for the metropolitans of these three dioceses and not for all the Oriental Churches. Besides, according to the tradition of the Church, the ordinary tribunal for the cases of metropolitans was the patriarchal synod and not the synod of Constantinople. The patriarchal synod was also the supreme instance of appeal for all the cases within the patriarchate, without prejudice to the right of the bishop of Rome to receive

orientale jusque' au IXe s., CSP, Roma 1962, 531; E. HERMAN, "Chalkedon und die Ausgestaltung", 475.

¹²² Cf. PERCIVAL, 274-275; G. ALBERIGO, Storia dei concili ecumenici, 105.

Council of Sardica, cc. 3, 4, 5; J. MEYENDORFF, "Ecclesiastical Organisations in the History of Orthodoxy", SVTQ 4 (1960) 10; cf. also E. LANNE, "Églises locales et patriarcats", 313-314.

J. HAJJAR, Le synode permanent, 44; "Les origines du synode permanent", 132; also C. HEFELE, Histoire des conciles, II, 2, 796 & 826.

appeals from the whole Church.¹²⁵ According to Emperor Justinian also the patriarchal synod was the supreme instance of appeals, including those of the metropolitans.¹²⁶

4.3. The Legislative Power of the Local Episcopal Bodies

As evident from the canons of the ecumenical councils and those of the local synods themselves, the early synods enjoyed general competence to regulate doctrinal, judicial and disciplinary matters within its territory. Here we first of all consider the canons which give indications concerning the legislative power of the local episcopal bodies and then evaluate the actual fact of their legislation itself.

4.3.1. Indications from the Canons

Apostolic Canon thirty-seven, refering to the need for convoking provincial synods twice a year, requires the bishops to "examine among themselves the decrees concerning religion and settle the ecclesiastical controversies which may have occurred". Council of Nicaea (325) canon five emphasizes the necessity of convoking the councils in order that there may be proper opportunity for enquiry into matters of dispute and to regulate the judicial, disciplinary and administrative problems of the province. The Synod of Antioch states: "With a view to the good of the Church and the settlement of disputes, it is decreed to be well that synods of bishops should be held in every province twice a year [...] so that presbyters and deacons, and all who think themselves unjustly dealt with, may resort to these synods and obtain the judgment of the synod". 129

¹²⁵ Cf. P. P. JOANNOU, "Pape, concile et patriarches", 531-532; W. DE VRIES, "Die Entstehung der Patriarchate des Ostens und Ihr Verhaltnis zur p\u00e4pstlichen Vollgewalt", Scholastik 37 (1962) 55-56.

¹²⁶ Novella 123, caput 22; for the text see footnote 119.

¹²⁷ PERCIVAL, 596; JOANNOU, CSP, 26; MANSI, 1, 35-38.

¹²⁸ Cf. TANNER, DEC 1, 8; ALBERIGO, COD, 7; JOANNOU, CCO, 27-28.

¹²⁹ ANTIOCH, c. 20, PERCIVAL, 118; JOANNOU, CSP, 120-121; MANSI, 2, 1315-1318.

The Council of Constantinople (381) which confirmed the privileges of the primatial sees of Alexandria, Antioch and Constantinople (cc. 2-3) stated that: "It is clear that the provincial synod will manage affairs in each province, as was decreed at Nicaea". 130 So it is the right of the provincial synod to manage all the judicial, legislative and disciplinary affairs within the territory of the province. The Council of Ephesus (431) also affirms the autonomy of provinces and provincial synods in their internal affairs: "It is therefore the pleasure of the holy and ecumenical synod to secure intact and inviolate the rights belonging to each province from the first, according to the custom which has been in force from of old". 131

Council of Chalcedon (451) canon nineteen points out that because the synods of bishops were not taking place as established by canon law, "many ecclesiastical matters that need putting right are being neglected. So the sacred synod decrees that in accordance with the canons of the fathers, the bishops in each province are to foregather twice a year at a place approved by the bishop of the metropolis and put any matter arising to rights [....]. 132 It is the right and obligation of the synods to settle the problems of the province and to make the necessary legislation for the same. The ecumenical Council of Nicaea II (787), after reminding the legislation of the previous councils concerning the convocation of synods twice a year, ordered that at least one synod should be held in each year even if there are some difficulties "and all that is incorrect should be put right". [...] When such a synod is held to discuss canonical and evangelical matters, the gathered bishops should pay particular care and attention to the divine and life-giving laws of God [...]". 133 In other words, the canons of the early ecumenical councils and provincial synods affirm

¹³⁰ TANNER, DEC 1, 32; ALBERIGO, COD, 28; JOANNOU, CCO, 47-48.

Ephesus c. 8, TANNER, DEC 1, 69; ALBERIGO, COD, 56; JOANNOU, CCO, 65.

¹³² TANNER, DEC 1, 96; ALBERIGO, COD, 72; JOANNOU, CCO, 84-85.

¹³³ Nicaea II c. 6, TANNER, DEC 1, 114; ALBERIGO, COD, 120; JOANNOU, CCO, 258-260.

the autonomy of the local episcopal bodies to regulate judicial, disciplinary and administrative matters within their territory by making and promulgating their own laws in accordance with the tradition of the Church and the legislation of ecumenical councils.

4.3. 2. The Legislation by the Generally Accepted Local Synods

Here we examine briefly the nature and extension of the legislative power of the local episcopal bodies from the actual fact of their legislation itself. We evaluate the legislation of the local synods of Ancyra, Neocaesarea, Gangra, Antioch, Laodicea, Sardica and Carthage.

- 1. The Synod of Ancyra (314) promulgated 25 canons. During the Roman persecution, many including priests and deacons offered sacrifices to idols, a practice which the Church considered as apostasy or denial of faith. Yet, after the persecution ended many wanted to return to the Church. The canons of Ancyra deal mainly with the reception of these *lapsi* and prescribe the necessary discipline and punishments to be accomplished before their re-admission (cc. 1-9). Other canons deal with the life and discipline of the clergy (cc. 10-15 & 18-19) and punishments for particular sins such as relationship with beasts (cc. 16-17), adultery (c. 20), fornication (c. 21& 25), homicide (c. 22-23), and divination (c. 24).
- 2. The Synod of Neocaesarea (circa 315). This synod promulgated 15 canons which deal with the sins against the sixth and ninth commandments and proper punishments for those who commit them (cc. 1-10). This council also treat some aspects of the discipline of the clergy (cc. 11-15).
- 3. The Synod of Gangra (325-381) made twenty canons, which are in fact twenty anathemas against false doctrines spread by a certain Eustathius and his followers concerning marriage and some other aspects of ecclesial life.
- 4. The Synod of Antioch (341) established twenty-five canons regulating administrative, disciplinary and judicial questions. The council first of all determines punishments for those who create disorders in the Church, like changing the lawful tradition of Easter (c. 1), refusing holy communion

- (c. 2), priests and deacons going to other dioceses without permission (c. 3) and disobedience of priests and deacons to their proper bishop (c. 5). Other legislation of this council can be summarized in the following manner:
 - Competent forum, different instances of trial and other judicial procedures (cc. 4, 6, 11-15);
 - The principle of synodality, metropolitan system and the laws concerning the convocation of synods (cc. 9 & 20);
 - Election and ordination of bishops by the synod of the province presided over by the metropolitan and the canonical possession of an eparchy (cc. 16-19, 21 & 23) by an ordained bishop;
 - Territoriality of jurisdiction and non-interference in the administration of other eparchies or dioceses (cc. 18-22);
 - Administration of temporal goods (cc. 24-25).
- 5. The Synod of Laodicea (343-381) stipulated 59 canons, which treat mainly the divine worship and discipline of the sacraments. The council established laws concerning:
 - the re-admission of sinners to holy communion (cc.1-2);
 - the ordination to priesthood (cc. 3-5);
 - reception of heretics, who repent, to the Church (cc. 6-8) and the relationship of Catholics with heretics (cc. 9-10 & 31-34);
 - the election and appointment of bishops and presbyters (cc. 11-13);
 - worship and administration of sacraments (cc. 14-19, 27-29, 35, 37, 44-53 &59);
 - Ministry and life of priests, deacons and those who are in minor orders (cc. 20-27, 30, 36, 40-43, 54-58).
- 6. The Synod of Sardica (343 or 344) decreed twenty canons which elucidate the questions of nomination, ordination, life, ministry and behaviour of bishops in various circumstances. Among its legislation we find also the three famous and well-researched canons concerning the right of

appeal to Rome for bishops already adjudicated by the provincial synods (cc. 3-5).

7. The Synod of Carthage (419) has 138 canons attributed to it which treat doctrinal, disciplinary, judicial and administrative problems. The enumeration of the canons is preceded by the title, "The Canons of the 217 Blessed Fathers who assembled at Carthage". According to common opinion, these canons were made in different synods, held mainly in Carthage which was formerly the centre of the whole of Africa. But later in 419, another council was held in the same city at which all the canons previously adopted were considered. The greater part of them were again confirmed by the authority of the synod, and were thus called "the Code of Canons of the African Church". 134

4.3.3. The Legislation of Some Important Plenary Councils of the Latin Church

- 1. The Synod of Arles in Gaul (314): treated the heresy of Donatism, attempted to resolve the Paschal controversy and the question of the baptism of heretics as well as promulgated twenty-three disciplinary laws for the regulation of different aspects of ecclesial life. 135
- 2. The Synod of Hipo (393): promulgated forty-three canons which affirm the primacy of the See of Carthage among the African provinces, determine the competent forum for judicial trials at different levels and regulate the discipline of the clergy and their relatives. 136
- 3. The Synod at Orange (441): enacted thirty canons for the better ordering of ecclesial life. 137
- 4. The second Synod of Arles (443): decreed fifty-six canons, of which many are reiteration of the ordinances of earlier ecumenical and local synods. The canons deal with the

¹³⁴ PERCIVAL, 438-440; JOANNOU, CSP, 190 & 194-196.

¹³⁵ Cf. MANSI, 2, 471-474.

¹³⁶ Cf. MANSI, 3, 849-850.

¹³⁷ Cf. MANSI, 6, 434-441.

election of bishops, discipline of the clergy, procedure for the convocation of synods, celebration of the sacraments, etc. 138

- 5. The first Synod of Orleans (511): stabilized thirtyone canons which regulate the administration of temporal goods of the Church, discipline of the sacraments and feasts, punishments for various offenses, etc.¹³⁹
- 6. The Synod of Epaon, in Burgundy (517): established forty canons which moderate the life and discipline of clerics: bishops, priests, deacons and religious; and determined penalties for specific offenses. 140
- 7. The third Synod of Toledo (589): received the declarations of the faith of Nicaea, Constantinople, Ephesus and Chalcedon, and condemned all the then existing antiorthodox doctrines in twenty-three anathemas. This council also established twenty-three canons regarding the discipline of the clergy, administration of the sacraments, etc.¹⁴¹

We have scrutinized the canons of ecumenical councils and important local synods which deal with the legislative power of the local episcopal bodies and then accentuated the very fact that the local episcopal bodies regulated doctrinal, disciplinary and administrative matters, by presenting their legislation in a panoramic way. From our analysis it becomes evident that in the early Church the local episcopal bodies enjoyed general competence and sufficient autonomy to regulate everything within its territory by its own laws according to the orientations given by the ecumenical councils. Their competence was limited only by the legislation and doctrinal definitions of the ecumenical councils.

5. The Development of Patriarchal Synods and Plenary Councils

When we evaluate the conciliar history it becomes evident that the metropolitan system and provincial synods

¹³⁸ Cf. MANSI, 7, 876-886.

¹³⁹ Cf. MANSI, 8, 350-356.

¹⁴⁰ Cf. MANSI, 8, 559-564.

¹⁴¹ Cf. MANSI, 9, 977-987.

originated first. Gradually, there developed different kinds of plenary councils, of which the patriarchal synods are of prime importance. By plenary council we mean the lawful assembly of the bishops and metropolitans of several provinces within a region, kingdom or nation to deliberate on religious matters and to promulgate laws for the same territory. Such councils were supra-provincial (more than one province), but not ecumenical (assembly of the bishops of the universal Church). In the history of the Church, between provincial synods and ecumenical councils, we can delineate different forms of plenary councils such as general councils of the East, patriarchal synods as well as regional or national councils of the West. 143

- 1. General councils of the East: assembly of the bishops of the Orient without the participation of the Church of Rome. The Synod of Antioch (341)¹⁴⁴ and the Synod in Trullo¹⁴⁵ were general synods in which the four patriarchates of the Orient within the Roman Empire participated: Constantinople, Alexandria, Antioch and Jerusalem. General synods were rare and exceptional.
- 2. Patriarchal Synods: assembly of the bishops and metropolitans of the same patriarchate, convoked and presided over by the patriarch. The tradition of the patriarchal synods continue to exist in the East; however, in the West, patriarchal synods, namely the assembly of the bishops and metropolitans of the Latin Church, convoked and presided over by the pope, the patriarch of the West, have fallen into desuetude.
- 3. National, regional or primatial councils of the West: assembly of the bishops and metropolitans of a nation, region or kingdom, convoked or presided over by a primate or important metropolitan.

¹⁴² Cf. DTC, 639.

¹⁴³ Cf. JOANNOU, CSP, 503; DDC, 637-638; P. HINSCHIUS, System des Katholischen Kirchenrechts, 328.

¹⁴⁴ Cf. JOANNOU, CSP, 100 & 503; C. HEFELE, Histoire des conciles, I. 2, 704-705.

¹⁴⁵ JOANNOU, CCO, 99.

5.1. The Patriarchal Synods

The origin and progress of patriarchal synods are intimately connected with the development of ancient Christian centres or patriarchates, namely Rome, Alexandria, Antioch, Jerusalem and Constantinople within the Roman Empire and Persia and Armenia outside of it. 146 The sixth canon of Nicaea, the first ecumenical council of the Church, recognized and regularized the supra-metropolitan prerogatives of Rome, Alexandria and Antioch over certain other provinces. 147 The seventh canon of the same council recognized the special position of Jerusalem - which later emerged as a patriarchate - according to the custom and ancient tradition. 148

The Council of Constantinople (381) in its second canon recognized and confirmed the primacy that belonged to the great sees of Alexandria and Antioch and established that the diocesan bishops were not to intrude in Churches beyond their own boundaries. The third canon of the same council affirmed the supra-metropolitan prerogatives of Constantinople and gave it the privileges of honour after the bishop of Rome. Later, the Council of Chalcedon definitively fixed the prerogatives of the four great Oriental sees. Later

¹⁴⁶ Cf. P. PALLATH, The Synod of Bishops of Catholic Oriental Churches, Rome 1995, 105-109.

[&]quot;Antiqua consuetudo servetur per Agyptum, Libyam et Pentapolim, ita ut Alexandrinus episcopus horum omnium habeat potestatem, quia et urbis Romae episcopo paralis mos est. Similiter autem et apud Antiochiam ceterasque provincias sua privilegia serventur ecclesiis". Nicaea I c. 6, TANNER, DEC 1, 8-9; ALBERIGO, COD, 8; JOANNOU, CCO, 28-29.

Nicaea I c. 7, JOANNOU, CCO, 29; TANNER, DEC 1, 9; ALBERIGO, COD, 8;. For the special position of Jerusalem see LANNE, "Églises locales et patriarcats", 308; P. P. JOANNOU, "Pape, concile et patriarches", 542; H. MAROT, "Note sur la pentarchie", Irénikon 32 (1959) 437.

[&]quot;Verumtamen Constantinopolitanus episcopus habeat honoris primatum praeter Romanum episcopum, propterea quod urbs ipsa sit iunior Roma", Constantinople I c. 3, TANNER, DEC 1, 32; ALBERIGO, COD, 28; JOANNOU, CCO, 47-48.

¹⁵⁰ Cf. c. 28, TANNER, 99-100; JOANNOU, CCO, 90-92; ALBERIGO, COD, 75-76.

the Council of Chalcedon, the See of Jerusalem also obtained its independence and became the fifth patriarchate. To Jerusalem were given the Three Palestine provinces separated from the Church of Antioch. ¹⁵¹ In addition, two other patriarchates or catholicates developed outside the Roman Empire, in Persia and Armenia respectively. The Persian Church became a fully fledged autonomous catholicate at the beginning of the fifth century ¹⁵² and the Armenian Church in the sixth, ¹⁵³

Along with the development of these great Christian centres we see also a corresponding development of local episcopal bodies like supra-provincial synods or patriarchal

The promotion of the see of Jerusalem to the patriarchate is not treated in the canons of the council. The Fathers in the fourth and last session ratified an accord between Maximus of Antioch and Juvanal of Jerusalem. "Maximus reverendissimus episcopus antiochiae Syriae dixit. Placuit mihi reverend. episcopo Juvenali, propter multam contentionem per consensum ut sedes quidem Antiochensium maximae civitatis beati Petri habeat duas Phoenicias et Arabiam, sedes autem Hierosolimorum habeat tres Palestinas. Et rogamus ex decreto vostrae magnificentiae et sancti concilii, haec scripto firmari. Juvenalis sanctissimus Hierosolimorum civitatis episcopus dixit: Haec etiam mihi complacuerit ut sancta quidem Christi resurrectio tres Palestinas habeat, sedes autem antiochiensis duas Phoenicias et Arabiam". Chalcedon, Actio VII, MANSI, 7, 179; SCHWARTZ, ACO II, 3, 4-5.

J. B. CHABOT, Synodicon orientale ou recueil des synodes nestoriens, Paris 1902, 259-260 & 296; W. F. MACOMBER, "The Authority of the Catholicos Patriarch of Seleucia-Ctesiphon", in I patriarcati orientali nel primo millennio, OCA 181 (1968) 179-200; SACRA CONGREGAZIONE PER LA CHIESA ORIENTALE, Oriente cattolico, cenni storici e statistiche, Citta del Vaticano 1962, 360; W. DE VRIES, Rom und die Patriarchate des Ostens, Freiburg-München 1963, 8-9; "Entstehung und Entwicklung der autonomen Ostkirchen im ersten Jahrtausend", Kanon 4 (1980) 52-53; Oriente cristiano ieri e oggi, Roma 1949, 34-35; LANNE, "Églises locales et patriarcats", 304-308

¹⁵³ For the origin, development and autonomy of the Armenian Church: G. AMADOUNI, "L'autocephalie du katholicat Armenien", in I patriarcati orientali nel primo millennio, OCA 181 (1968) 137-175; SACRA CONGREGAZIONE PER LA CHIESA ORIENTALE, Oriente cattolico, cenni storici e statistiche, 394; W. DE VRIES, Rom und die Patriarchate des Ostens, 11-12; "Entstehung und Entwicklung der autonomen Ostkirchen", 53-54.

synods. The Synod of Antioch (341) speaks of a "greater synod of bishops" to which any presbyter or deacon deposed by his own bishop or any bishop deposed by a provincial synod can make appeal. The Synod of Carthage (419) regulates that "every year there should be a synod, to which all, who are primates of the provinces, should send bishops as legates, from their own synods, two or as many as they choose; so that when the synod meets it may have full power". Similarly canon 76 of the same synod indicates the procedure for celebrating a synod in which bishops from several provinces participate. Evidently these canons deal with regional synods in which several provinces took part.

The first Council of Constantinople commanded that those who have some accusations against a bishop "should first lay the accusations before all the bishops of the province and prove before them the crimes committed by the bishop in the case. If it emerges that the bishops of the province are not able to correct the crimes laid at the bishop's door, then a higher synod of the bishops of that diocese, convoked to hear this case must be approached [...]". 157 As we have already seen, the competent forum for the trial of bishops is the provincial synod, but appeal can be submitted to the synod of the diocese. The word "diocese" used in the canon shall not be understood in the modern sense of a territory administered by a bishop. Diocese signifies the administrative grouping of several provinces, as introduced by the Emperor Diocletian. The Church in the eastern part of the Roman empire was divided into five dioceses corresponding to the five civil administrative units. There were several provinces under each diocese. 158 Therefore, a synod of the diocese signifies

¹⁵⁴ Canon 12, PERCIVAL, 114; JOANNOU, CSP, 114; MANSI, 2, 1314.

¹⁵⁵ Canon 20, PERCIVAL, 451; JOANNOU, CSP, 236-237.

¹⁵⁶ PERCIVAL, 419-420; JOANNOU, CSP, 316-317.

¹⁵⁷ Constantinople I, c. 6, TANNER, DEC 1, 34; ALBERIGO, COD, 30; JOANNOU, CCO, 52.

¹⁵⁸ Cf. I. ORTIZ DE URBINA, Nicée et Constantinople, 213-214; C. HEFELE, Histoire des conciles, II, 1, 23-24; W. DE VRIES, Oriente cristiano ieri e oggi, 29-30; J. HOECK, Primum Regnum Dei, Die Patriarchalstruktur der Kirche als Angelpunkt der Wiedervereinigung,

the assembly of the bishops and metropolitans of several provinces within the frontiers of a diocese of the Empire. Such a synod was later called a patriarchal synod.

Again the Council of Chalcedon witnessed the development of diocesan or patriarchal synods. This council determined that the competent forum for the case of a metropolitan is the diocesan synod: "If a bishop or cleric is in dispute with the metropolitan of the same province, let him engage either the exarch of the diocese or the see of imperial Constantinople". The head of a diocese named "exarch" in the canon is later called patriarch. From the canon it is once more evident that supra-provincial or patriarchal synods were gradually emerging at that time.

The fourth Council of Constantinople (869-870) underscored further the powers of the patriarch and the necessity and utility of patriarchal synods. According to canon seventeen, the heads of the five great sees: Rome, Constantinople, Alexandria, Antioch and Jerusalem, in accord with the ancient custom "have authority over all the metropolitans whom they promote or confirm in the episcopal dignity, either through the imposition of hands or the bestowal of the pallium; that is to say, the authority to summon them, in case of necessity, to a meeting in synod or even to reprimand and correct them, when a report about some wrongdoing leads to an accusation". The authority of the patriarch to convoke the metropolitans to a synod is particularly emphasized in the canon. The same canon states further:

Metropolitans have had the custom of holding synods twice a year and therefore, they say, they cannot possibly come to the chief one, that of the patriarch. But this holy and universal synod, without forbidding the meetings held by the

München 1975, 46; J. HAJJAR, "Les origines du synode permanent", 126.

¹⁵⁹ Canon 9, TANNER, DEC 1, 91; ALBERIGO, COD, 67; JOANNOU CCO, 76-77.

¹⁶⁰ The expression "exarch" at that time signified those higher metropolitans who had several provinces under them.

¹⁶¹ Canon 17, TANNER DEC 1, 179; ALBERIGO, COD, 155; JOANNOU, CCO, 323.

metropolitans, is conscious that the synods held by the patriarchal see are more necessary and profitable than the metropolitan ones, and so demands that they take place. A metropolitan synod affects the good order of only one province; a patriarchal synod often affects the good order of a whole civil diocese, and in this way the common good is provided for. So it is fitting that the common good take priority over a particular one, especially when the summons to meet has been issued by those of greater authority. The fact is that certain metropolitans seem to regard with contempt the ancient custom and canonical tradition, by their not meeting together for the common good. Therefore the laws of the church demand, with severe penalties and leaving no loop-hole, that they comply with the summons of their patriarchs whether they are summoned as a body or individually. 162

The canon clearly affirms the right of the patriarch to convoke patriarchal synods which embrace all the metropolitan provinces of his territory. Though the canon respects the metropolitan system and the ancient canonical tradition of provincial synods, it attributes more importance to the patriarchal synods since they provide for the common good of a whole region.

In short, the patriarchal synod was the assembly of the metropolitans and bishops of the several provinces of a civil diocese or patriarchate under the presidency of the exarch or patriarch. This synod exercised administrative, judicial and legislative functions in the whole diocese that fell beyond the competence of the provincial synod, and served as the competent forum for the cases of metropolitans and the highest court of appeal for cases already judged by the provincial synods. Though the provincial synods retained the

¹⁶² TANNER DEC 1, 179; ALBERIGO, COD, 156; JOANNOU, CCO, 324-325.

¹⁶³ Cf. C. HEFELE, Histoire des conciles, I, 1, 5-6; P. P. JOANNOU, "Pape, concile et patriarches", 503; L. WALDMÜLLER, "Das Konzil im Verständnis der Ostkirche", 146; B. KURTSCHEID, Historia iuris canonici, 147; N. MILASH, Das Kirchenrecht der Morgenländischen Kirche, 317-318 & 320-322.

right of electing bishops and regulating matters within the province, gradually the patriarchal or regional synods assumed much of their powers.

In the whole first millennium the patriarchal synods in the East, enjoyed sufficient legislative, judicial, electoral and administrative autonomy. As the guarantee of true faith and communion, the Roman Pontiff intervened in the affairs of the local Oriental Churches at times either to safeguard the true faith and morals or to restore peace and harmony in the case of serious canonical disorders or to give his decision when appeals were made to Rome. W. De Vries, who made many scholarly investigations about the ancient patriarchates, describes the canonical autonomy of the patriarchal synods: "The East freely elected its own patriarchs, metropolitans and bishops and erected new dioceses or elevated their grade; the East itself regulated its liturgy and canonical legislation; the East also moderated the discipline of the clergy and laity". 164

Based on the studies of De Vries, Prof. Clarence Gallagher underscores the canonical autonomy of the local patriarchal Churches as follows:

This was not at all complete independence. It did not exclude the occasional intervention of a higher authority. It was not at all in opposition to the primacy of the Roman Pontiff; in matters of faith and communion Rome was acknowledged to be of central importance. It is rather a question of canonical autonomy, which De Vries describes in the following way: 1. The East freely elected its own patriarchs and bishops; 2. The East was very independent in regulating its liturgy and canonical legislation; 3. The East was rather independent in dealing with the discipline of the clergy and laity. It would appear, therefore, as a matter of history

W. DE VRIES, "La S. Sede ed i patriarcati cattolici d'Oriente", OCP 27 (1961) 318; for detailed explanation, pages 316-325; Cf. also "The Origin of Eastern Patriarchates and Their Relationship to the Power of the Pope", One in Christ (1966) 51-59; Rom und die Patriarchate des Ostens, 19-22; "Die Entstehung der Patriarchate des Ostens", 339-366.

that during these first thousand years or so of the Church's history, the eastern Churches regulated their own liturgy and provided their own canonical legislation without the intervention of Rome. There was no requirement of confirmation by Rome. 165

Prof. Ivan Zuzek and many other scholars who studied the patriarchal system and the powers of patriarchal synods in the first millennium came to the same conclusion regarding the canonical autonomy of such synods.¹⁶⁶

5.2. Plenary Councils of the Latin Church

In addition to innumerable provincial synods, different kinds of plenary councils developed also in the Western Patriarchate. We try to illustrate the evolution of plenary councils in the West in the first millennium, indicating some examples.

5.2.1. Plenary Councils of Patriarchal Character

There existed also in the West a kind of patriarchal synod, namely the assembly of the bishops (at least in a representative manner) and metropolitans of the Latin Church or Western patriarchate, presided over by the bishop

¹⁶⁵ C. GALLAGHER, "The Concept of Protos' in the Eastern Catholic Churches", Kanon 9 (1989) 105-106.

¹⁶⁶ I. ZUZEK, "Animadversiones quaedam in decretum de Ecclesiis orientalibus catholicis concilii Vaticani II", Periodica 55 (1966) 276-278; "Oriental Canon Law: Survey of Recent Developments", Concilium 5 (1965) 70 & 72; H. MAROT, "The Primacy and the Decentralisation of the Early Church", Concilium 1 (1965) 13-14; H. J. SCHULZ, "Dialogue with the Orthodox", Concilium 4 (1965) 68-69; V. PARLATO, L'ufficio patriarcale nelle Chiese orientali dal IV al X secolo, Padova 1969, 65-68; O. KÉRAMÉ, "Les chaires apostoliques et le rôle des patriarcats", Unam Sanctam 39, Paris 1962, 266-268; L. LAHAM, "Le patriarcat d'Antioche au premier millénaire", 122-128; W. F. MACOMBER, "The Authority of the Catholicos-Patriarch" of Seleucia-Ctesiphon", 181-196; M. J. LE GUILLOU, "L'experience orientale de la collégialité épiscopale", 174; K. MEDAWAR, "De la sauvegarde des droits de l'Église orientale", POC 9 (1959) 224; J. HOECK, Primum Regnum Dei, Die Patriarchalstruktur der Kirche. 276-278; N. MILASH, Das Kirchenrecht der Morgenländischen Kirche, 301-303.

of Rome, the patriarch of the West. The Synod of Arles in Gaul (314) may be considered as a general council of the West or of the Roman Patriarchate. A great part of the Western Christendom was represented at Arles by some bishops. The pope also participated in this synod through his delegates. Assembled on the occasion of the schism of the Donatists, this synod examined and judged the schism; tried to resolve the paschal controversy; dealt with the question of the baptism of heretics; and promulgated twenty-one canons. 167

Similarly the Lateran Synod in 649 was a general synod of the West, convoked and presided over by Pope Martin I, in which bishops from different provinces of the Western Church took part. This council promulgated twenty canons which are mainly of doctrinal character. In 680, there was another synod in Rome, presided over by Pope Agatho in which bishops of the whole West participated. 169

Some popes encouraged the convocation of general synods of the West. For example, Pope Leo the Great urged that two synods be held each year, in accordance with canon 5 of the Council of Nicaea: "For with the grace of God it will be easier to see to it that no scandals or errors arise in the Church of Christ if in the presence of the most holy Apostle Peter there is regular and common deliberation on keeping his dispositions and regulations inviolate among all the priests of the Lord". 170

¹⁶⁷ C. HEFELE, Histoire des conciles, I. 1, 181-196; cf. P. HINSCHIUS, System des katholischen Kirchenrechts, 515; MANSI, 2, 463 f.

¹⁶⁸ C. HEFELE, Histoire des conciles, III. 1, 434-436; cf. P. HINSCHIUS, System des katholischen Kirchenrechts, 515; MANSI, 10, 863 f.

¹⁶⁹ C. HEFELE, Histoire des conciles, III. 1, 475-476; cf. P. HINSCHIUS, System des katholischen Kirchenrechts, 515-516; MANSI, 11, 1856.

¹⁷⁰ Ep. 16,7, PL 54, 702.

¹⁷¹ C. HEFELE, Histoire des conciles, II. 1, 82-90; cf. P. HINSCHIUS, System des katholischen Kirchenrechts, 511; MANSI, 3, 849-850.

5.2.2. Plenary Councils of Regional or National Character

In 393 there took place in Hipo a great African synod. presided over by Aurelius, archbishop of Carthage. In this synod many bishops from different provinces were present. so it was called a plenarium totius Africae concilium. The synod promulgated 43 canons which laid the foundation for the canonical discipline of the ancient African Church. 171 The regular synodal assembly of the African Church is clear from canon five which prescribes that "Every year a council shall take place, to which all ecclesiastical provinces shall send their deputies". 172 In accordance with this canon, following the Synod of Hipo in 393, there took place about twenty synods. almost all at Carthage under the presidency of Archbishop Aurelius. 173 Later in the synod held at Carthage in 419, the fathers re-examined and approved all the canons hitherto enacted by different synods in Africa and promulgated 133 canons, known as the Codex Canonum Ecclesiae Africanae. 174 Thus in the first centuries the African Church functioned like an Eastern patriarchate under the primatial authority of the Bishop of Carthage celebrating regular synods and promulgating laws for the African Church.

In 443, there was a synod in Arles (second synod of Arles), probably under the presidency of St. Hilary of Arles, in which bishops from several provinces were present. It promulgated fifty-six canons, of which many are adaptations of the canons of earlier synods, particularly of Orange in 441, Vaison in 422, the first Synod of Arles and the ecumenical Council of Nicaea.¹⁷⁵

National councils, namely, the assembly of the metropolitans and bishops of a nation or of a unit similar to a nation, first appeared in the Frankish Kingdom. The first council of

¹⁷² C. HEFELE, Histoire des conciles, II. 1, 86.

¹⁷³ C. HEFELE, Histoire des conciles, II. 1, 97.

¹⁷⁴ C. HEFELE, *Histoire des conciles*, II. 1, 201-209; JOANNOU, CSP, 90 & 194-196.

¹⁷⁵ C. HEFELE, Histoire des conciles, II. 1, 460-462; cf. P. HINSCHIUS, System des katholischen Kirchenrechts, 512; MANSI, 6, 461-462.

national character took place on 10 July 511 in Orleans (this was followed by many others) at which the metropolitans and bishops of the Frankish and West Gothic kingdoms participated. This synod promulgated 31 canons. Similarly King Sigismund of Burgundy held a synod at Epaon in 517, with the purpose of improving Church discipline in his kingdom. The synod was summoned by the two metropolitans of the Kingdom of Burgundy, Avitus of Vienne and Viventiolus of Lyons, and presided over by Avitus. In this synod about 34 bishops were present. It produced 40 canons. 177

From the second half of the sixth century we find also national councils in the Kingdom of Visigoths in Spain. After King Reccared had embraced the Catholic Faith, he summoned the bishops of Spain (and Gallia Narbonensis) in May 589 to a general synod at Toledo. This synod accepted and confessed the orthodox doctrines of the ecumenical councils of Nicaea, Constantinople, Ephesus and Chalcedon; and pronounced 23 anathemas against heretics. It also stipulated 23 disciplinary norms for the regulation of Christian life in the Kingdom. This synod was followed by many others in Toledo itself.

Conclusion

We have analyzed the powers and functions of the local episcopal bodies according to the common tradition of the Church. Inspired by the apostolic council of Jerusalem, there developed in the early Church synods and assemblies especially when the Church was confronted with serious problems that could not be resolved by single eparchial bishops. Chronologically, provincial synods originated first. A provincial synod was the assembly of the bishops of the

¹⁷⁶ C. HEFELE, Histoire des conciles, II. 2, 1005-1006; cf. P. HINSCHIUS, System des katholischen Kirchenrechts, 539-540; MANSI, 8, 347 f.

¹⁷⁷ C. HEFELE, Histoire des conciles, II. 2, 1031-1036; cf. MANSI, 8, 555 f.

¹⁷⁸ C. HEFELE, Histoire des conciles, III. 1, 222-225; P. HINSCHIUS, System des katholischen Kirchenrechts, 543-541; MANSI, 9, 977-987.

¹⁷⁹ C. HEFELE, *Histoire des conciles*, III. 1, 225-228; MANSI, 9, 992-999.

same province convoked and presided over by the metropolitan, and such synods enjoyed electoral, legislative, judicial and administrative powers in the province. In the early Church, as determined by the first ecumenical councils and important local synods, the only competent authority for the election of bishops was the provincial synod. Similarly the provincial synods acted as a sort of appeal court for the cases already judged by the diocesan bishops; it was competent to judge even diocesan bishops, if necessary. The local synods also enjoyed ample legislative power; they regulated judicial, disciplinary, doctrinal and administrative matters within their territory by making and promulgating their own laws in harmony with the decrees of the ecumenical councils.

Gradually there emerged supra-provincial synods or plenary councils which were assemblies of the metropolitans and bishops of an ecclesiastical region. Their development is intimately connected with the emergence of the great Christian centres like Rome, Alexandria, Antioch, Jerusalem and Constantinople within the Roman Empire and Persia and Armenia outside of it. These great sees were later to become patriarchates and their episcopal bodies, patriarchal synods. The patriarchal synod was the assembly of the metropolitans and bishops of the patriarchate, convoked and presided over by the patriarch. Even after the emergence of such patriarchal synods, the provincial synods retained the right of electing bishops and regulating matters within the province. However, gradually the patriarchal synods assumed much of their legislative, judicial and administrative powers. patriarchal synods continue to exist in the East, both among the Catholic and non-Catholic Churches.

The Western Church remained as a single patriarchate. In the ancient Western Church, though there were some synods of a patriarchal character, gradually they gave way to regional or national plenary councils. Such councils enjoyed sufficient autonomy and settled doctrinal and disciplinary disputes and promulgated laws for safeguarding the unity and communion of the Churches within the same region or nation. Their competence was limited only by the doctrinal definitions and the disciplinary laws of the ecumenical councils.

Part One LOCAL EPISCOPAL BODIES OF THE EAST

Section One
THE SYNOD OF BISHOPS OF CATHOLIC EASTERN
CHURCHES

Chapter Two

THE STRUCTURE AND ORGANIZATION OF THE SYNOD OF BISHOPS

Introduction

The codification of Oriental Canon Law formally began in 1929 when Pope Pius XI established the preparatory Commission of Cardinals under the presidency of Cardinal Pietro Gasparri. The Commission was assisted by fourteen. delegates or consultors selected from each Oriental Church. In 1930, the Commission, including delegates from the Oriental Churches, unanimously decided to accept the 1917 Latin Code as the basis of the Oriental Code instead of the genuine Oriental sources.² On 17 July 1935, the same Pope instituted the Pontifical Commission for the Revision of the Code of Oriental Canon Law under the presidency of Cardinal Sincero.³ By 1948, the complete draft of the Code of Oriental Canon Law (CICO) was prepared by the Pontifical Commission, and Cardinal Coussa, Secretary of the Commission, presented the complete text to Pope Pius XII.4 The Pope promulgated 1590 canons as 4 motu proprios between 1949 and 1957, but the Code was not published in

¹ Notification in AAS 21 (1929) 669.

² Cf. D. FALTIN, "La codificazione del diritto canonico orientale", in La Sacra Congregazione per le Chiese orientali nel cinquantesimo della fondazione, Roma 1969, 129; SACRA CONGREGAZIONE PER LA CHIESA ORIENTALE, Oriente cattolico, cenni storici e statistiche, 39; N. EDELBY, "Unity or Plurality of Codes, Should the Eastern Churches Have a Special Code?", Concilium 3 (1967) 41; I. ZUZEK, "The Ancient Oriental Sources of Canon Law and the Modern Legislation for Oriental Catholics", Kanon 1 (1973), 148; O. BUCCI, "Il codice di diritto canonico orientale nella storia della Chiesa", Apollinaris 55 (1982) 391.

³ Notificatio de constituenda Pontificia Commissione ad Redigendum "Codex Iuris Canonicis Orientalis" with the names of cardinal members and other consultors in AAS 27 (1935) 306-308.

D. FALTIN, "La codificazione del diritto canonico orientale", 133; CONGREGAZIONE PER LA CHIESA ORIENTALE, Oriente cattolico, cenni storici e statistiche, 45-46; O. BUCCI, "Il codice di diritto canonico orientale", 401.

its entirety.⁵ Of these four motu proprios, *Cleri Sanctitati* deals with the synodal structure of Oriental Churches and *Sollicitudinem Nostram* with the judicial powers of the synod.

In 1959, Pope John XXIII expressed his intention to update the entire canonical discipline of the Church in light of Vatican II. "to revise the Code of Canon Law (1917) to meet the needs of the contemporary world and to form a new Code of the same kind for the Oriental Churches".6 Vatican II. especially in its decree Orientalium Ecclesiarum, has provided a compendium of Oriental law and established certain basic principles. On 10 June 1972, Pope Paul VI established the Pontifical Commission for the Revision of the Code of Oriental Canon Law (Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo).7 The mandate given to the commission was to revise the Code of Oriental Canon Law. both the promulgated and unpromulgated parts, in accordance with the spirit and directives of Vatican II. being faithful to the genuine Oriental traditions.8 After seventeen years of strenuous work, on 28 January 1989, the Commission presented the Codex Canonum Ecclesiarum Orientalium to Pope John Paul II for promulgation.9 The Pope promulgated the Code on

The four motu proprios are: De disciplina sacramenti matrimonii pro Ecclesia Orientali, Crebrae allatae, AAS 41 (1949) 89-117, 131 canons; De iudiciis pro Ecclesia Orientali, Sollicitudinem nostram, AAS 42 (1950) 5-120, 576 canons; De religiosis, de bonis Ecclesiae temporalibus, de verborum significatione pro ecclesiis orientalibus, Postquam Apostolicis litteris, AAS 44 (1952) 65-150, 325 canons; De ritibus orientalibus, de personis pro Ecclesiis orientalibus, Cleri sanctitati AAS 49 (1957) 433-558, 558 canons. For information about the unpromulgated texts see Nuntia 1 (1975) 23-31.

⁶ Cf. JOHN XXIII, "Ad Petri Cathedram", AAS 51 (1959) 498.

⁷ Nuntia 1 (1975) 11.

⁸ Cf. Nuntia 1 (1975) 11; also in AAS 66 (1974) 246.

⁹ For the genesis of the new Code, E. EID, "Presentazione del codice dei canoni delle Chiese orientali", L'Osservatore Romano, 27 Ottobre 1990, 7; also in Nuntia 31 (1990) 24-26; I. ZUZEK, "Presentazione del Codex Canonum Ecclesiarum Orientalium", ME 115 (1990) 591-597; M. BROGI, "Codificazione del diritto comune delle Chiese orientali cattoliche", REDC 45 (1988) 20-30; O. BUCCI, "Il codice di diritto canonico orientale", 411-448; G. NEDUNGATT, "A New Code for the Oriental Churches", VJTR 55 (1991), 269-272; FARIS, "The Codification and Revision of Eastern Canon Law", SC 17 (1983) 456-485.

18 October 1990 by the Apostolic Constitution "Sacri Canones", and the new Code came into legal force on 1 October 1991. In this chapter, we analyse the structure and organization of the synod of bishops according to the Codex Canonum Ecclesiarum Orientalium in comparison with the old law as found in Cleri Sanctitati.

1. Different Kinds of Synods according to Cleri Sanctitati

An accurate examination of *Cleri Sanctitati* evidences the existence of at least four kinds of synods, in addition to the ecumenical synod treated in cc. 167-174.

- 1. Patriarchal or Archiepiscopal Synod: the meeting of the bishops and other hierarchs of a patriarchal or archiepiscopal Church, in which those bishops subjected to the patriarch or archbishop participate. Thus the bishops outside the territory of a Church cannot participate since they are not subject to the patriarch or archbishop, but are directly under the pope. Such a synod is convoked and presided over by the patriarch or by the archbishop.¹¹
- 2. Metropolitan or Provincial Synod: the assembly of bishops and other hierarchs of an ecclesiastical province outside the patriarchate or archiepiscopate. Such a synod is convoked and presided over by a metropolitan who is not under a patriarch or archbishop.¹²
- 3. Synod of the Hierarchy of Several Rites: meeting of the bishops and hierarchs of several rites with the

¹⁰ JOHN PAUL II, Ap. Const. "Sacri canones", AAS 82 (1990) 1033-1044.

Episcopi ceterique Hierarchae, Patriarchae vel Archiepiscopo subiecti, conveniunt in Synodum patriarchalem vel archiepiscopalem. Hanc Synodum Patriarcha vel Archiepiscopus convocat eique praeest; idemque, audita Synodo permanenti, locum celebrationis designat. CS c. 340 § 1.

Episcopi ceterique Hierarchae provinciae ecclesiasticae extra patriarchatus et archiepiscopatus constituti, conveniunt in Synodum provincialem. Hanc Synodum Metropolita Patriarchae vel Archiepiscopo non subiectus convocat, locum eiusmet celebrationis, auditis omnibus qui assistere debent cum suffragio deliberativo, intra provinciae territorium, designat, eique praeest. CS c. 340 § 2.

permission of the Roman Pontiff and under his legate who is to convene and preside over the synod. 13

4. Synod of Several Ecclesiastical Provinces: assembly of the bishops and other hierarchs of several provinces not subject to a patriarch or archbishop convoked by the legate of the Roman Pontiff, who also presides over the synod.¹⁴

1.2. Different Kinds of Synods of a Patriarchal Church

The patriarchal or archiepiscopal synod is designated differently according to its purpose. Thus we find at least three kinds of synods in the patriarchate besides the permanent synod, which is part of the patriarchal curia.

1.2.1. The Patriarchal or Archiepiscopal Synod (cc. 341-350)

This is the assembly of bishops and other hierarchs within the territorial boundaries of a patriarchate or archiepiscopate, convoked and presided over by the patriarch or archbishop (c. 340 § 1). In this synod, resident bishops, who on their part can send their coadjutor or auxiliary, as well as titular bishops, apostolic administrators of eparchies, exarchs and administrators of vacant sees must take part with decisive vote. In addition, the president of an association of monastic confederations, presidents of monastic confederations and the supreme superiors of the clerical

Episcopi ceterique Hierarchae plurium rituum in Synodum convenire possunt, obtenta licentia a Romano Pontifice qui locum celebrationis Synodi determinat, et suum Legatum designat ad Synodum convocandum eique praesidendum. CS c. 340 § 3.

¹⁴ Episcopi ceterique Hierarchae plurium provinciarum Patriarchae vel Archiepiscopo non subiectarum in Synodum convenire possunt, designato a Romano Pontifice Legato, qui Synodum convocat eique praeest. CS c. 340 § 4.

Cuilibet Synodo assistere debent cum suffragio deliberativo, praeter praesidem, Episcopi residentiales, qui sui loco mittere possunt Coadiutorem vel Auxiliarem, Episcopi titulares, apostolici eparchiarum Administratores, Exarchi, Administratores sedium vacantium. CS c. 341 § 1.

religious institutes must also be called to a patriarchal synod.16 However these persons normally possess only a consultative vote, unless the Apostolic See or the synodal Fathers grant a decisive vote to the president of the monastic association or the president of a monastic confederation. 17 In an archiepiscopal synod, in addition to those who participate in the patriarchal synod, the superiors of independent monasteries. other major superiors of clerical religious institutes and two consultors from the eparchial consultors of each eparchy must take part. but only with consultative vote.18 Laws can be enacted by the patriarch or archbishop only in this synod for the whole patriarchal or archiepiscopal Church.19 The patriarchal or major archiepiscopal synod is to be held as often as the patriarch or archbishop with the consent of the permanent synod deems it necessary, and at least every twenty years (c. 344).

1.2.2. The Synod of Election of a Patriarch (cc. 221-239)

It is the convocation of "all and only the bishops of the same patriarchate, including titular bishops" who enjoy an active vote if they have been lawfully elected and confirmed

Praeter eos de quibus in can. 341 § 1, vocari debent: Ad Synodum Patriarchalem, Praeses Consociationis Confederationum monasticarum, Praeses Confederationis monasticae et supremi aliarum Religionum clericalium Moderatores. CS c. 342 n. 1.

Alii ex utroque clero viri ad Synodos convocati suffragio tantum consultivo gaudent, nisi Praesidi Consociationis monasticae et Praesidi Confederationis monasticae Sedes Apostolica vel, secreto scrutinio, Patres Synodi deliberativum suffragium expresse concesserint. CS c. 341 § 2.

Ad Synodum archiepiscopalem et provincialem, ii de quibus in n. 1, Superiores monasteriorum sui iuris, salvo iure particulari, ceterique Superiores maiores Religionum clericalium qui in territorio resideant et consultores eparchiales omnis eparchiae cuis Hierarcha ad normam can. 341 § 1, Synodo interesse debet, qui mittant ad Synodum duos ex consultoribus collegialiter designatos. CS c. 342 n. 2.

¹⁹ Cf. CS c. 243 § 1. Leges, universalibus Ecclesiae legibus iisque etiam quas Sedes Apostolica pro patriarchatu constituit non contrarias, sive integrum patriarchatum ipsae respiciant sive aliquam ipsius partem, seu personarum coetum, Patriarcha, tantum in Synodo patriarchali de quo in can. 340 § 1 ferre valet. CS c. 326 § 1 n. 6. Legum in Synodo archiepiscopali latarum, firmo can. 350, § 1, promulgationem sedulo curare;

even though they have not received episcopal consecration, with the exclusion of those disqualified by law because of heresy, schism, sentence of a judge, or incapability of human action.²⁰ Clerics who lack episcopal consecration are absolutely excluded from this synod except as tellers,²¹ and lay persons of whatever position or authority cannot interfere in the election of the patriarch in any manner.²² Non-episcopal persons, some even with deliberative votes, may participate in the patriarchal synod; but in the synod for the election of a patriarch, only bishops (including those elected and confirmed) participate.²³ This synod is convoked by the administrator of the patriarchate²⁴ and normally presided over by the senior, according to episcopal consecration, among the bishops subject to the patriarch (c. 227).

1.2.3. The Synod of Election of Bishops (cc. 251-255)

The members of the synod of election of bishops are the same as that of the synod of election of the patriarch, namely the bishops of the same patriarchate, including titular bishops who are lawfully elected and confirmed. The synod of election of bishops is naturally convoked and presided over by the patriarch while that of patriarchal election is convened by the administrator (the only exception) (252 § 2).

1.2.4. Permanent Synod (cc. 288-295)

The permanent synod consists of the patriarch as president and four bishops appointed for five years (c. 289 § 1). Of these four bishops two must be residential bishops, designated according to the priority of the date of episcopal

²⁰ Cf. CS cc. 224 § 1; 109 § 1.

²¹ CS cc. 224 § 2; 228 §§ 1, 2.

Laici cuiusvis gradus et auctoritatis Patriarchae electioni neque interventu in Synodum neque candidatorum commendatione neque quovis alio modo semet immiscere valent, reprobata contraria consuetudine et revocato quolibet contrario privilegio. CS c. 224 § 3.

²³ Cf. M. BROGI, "Sinodi patriarcali assemblee e conferenze episcopali di rito orientale". Antonianum 51 (1976) 252.

²⁴ CS cc. 221 & 308 n. 3.

consecration (c. 289 § 2). One bishop is appointed freely by the patriarch and the other is elected by the synod of bishops (c. 289 § 3). The permanent synod is part of the patriarchal curia and its purpose is to assist the patriarch in transacting matters of importance and in deciding questions which concern the whole patriarchate (c. 288). Although the patriarch cannot make decisions against the majority of the members, the permanent synod, even if unanimous, cannot accomplish anything without the patriarch.²⁵

2. The Synod of Bishops and the Revision of Oriental Canon Law

Pope Paul VI inaugurated the work of the first Plenary Assembly of the Pontifical Commission for the Revision of Oriental Canon Law on 18 March 1974. In his allocution the Pope insisted that the reform of the Code should be based on the principle of fidelity to genuine Oriental traditions so that the authentic Oriental face may be preserved (proprius Orientis vultus integer servetur) and of fidelity to the spirit and directives of the Second Vatican Council for the renewal of Christian life. The above-mentioned Plenary Assembly of the Commission (18-23 March 1974) approved the "Guidelines for the Revision of Oriental Canon Law" and the work was started on the basis of these Guidelines²⁷.

2.1. Norms for the Revision of the Canons on Synodal Structure

In addition to the fundamental principles established by the Guidelines, the *Coetus de S. Hierarchia* at the beginning of the work of the Pontifical Commission formulated some basic orientations regarding the synodal structure of Oriental

²⁵ V. J. POSPISHIL, Code of Oriental Canon Law, The Law on Persons, Philadelphia 1960, 146.

AAS 66 (1974) 246. The complete version of this important allocution of the Pope can be found in L'Osservatore Romano, 18-19 March 1974, in Nuntia 1 (1975) 4-8 and in AAS 66 (1974) 243-249.

²⁷ For the "Guidelines" in different languages, see Nuntia 3 (1976) 3-24

Churches. Accordingly the whole revision was carried out on the basis of these important norms:

- 1. The procedure must be a practical one, deciding clearly the competence of the synod, but without affirming explicitly whether the patriarch or the synod is the superior authority.²⁸
- 2. There should be only one synod in the patriarchate; the synod of bishops, which is called at present the *Synodus electionum* and the *Synodus patriarchalis* (in CS 340-342) should be eliminated.²⁹
- 3. It belongs to the synod of bishops to enact laws for the whole patriarchate and to act as the "Supreme Tribunal" of the patriarchate (according to the canons *de processibus*) as well as to participate in the ordinary administration (that pertains to the patriarch, president of all synods) through the permanent synod.³⁰
- 4. A Conventus patriarchalis should be instituted (patriarchal assembly: the name of the institution of Cleri Sanctitati Canons 296-297 is to be changed). Such a conventus in which a wide participation of priests, deacons, religious and laity is ensured (perhaps through diocesan representation) will have only a consultative vote.³¹

^{28 &}quot;Sans affirmer explicitement qui entre le Patriarche et le Synode représente la 'superior instantia' il y aurait à procéder d'une façon pragmatique, et à déterminer clairement les compétences des Synodes". Nuntia, 2 (1976) 50; The same can be seen in Nuntia, 7 (1978) 21.

^{29 &}quot;Qu'il y ait dans les patriarcats un seul Synode, celui des évêques et qui est appelé actuellement 'Synodus electionum', et que soit éliminé celui qu'on appelle 'Synodus patriarchalis'" (CS cc. 340-342). Nuntia, 2 (1976) 50; also in Nuntia 7 (1978) 21.

^{30 &}quot;Il revient au 'Synodus episcoporum' de 'leges ferre' pour tout le patriarcat, et que celui-ci soit le 'Supremum Tribunal' du Patriarcat (selon les compétences dans les canons du 'de processibus') et que celui-ci participe à l'administration ordinaire (qui revient au Patriarche, président de tous les Synodes) à travers le Synode permanent". Nuntia 2 (1976) 50; see also Nuntia 7 (1978) 21.

^{31 &}quot;Qu'on institue un 'Conventus patriarchalis' (Conseil patriarcal; il y aurait alors à changer le nom de l'institution du CS can. 296-297) qui n'aurait qu'une voix purement consultative, auquel serait admise une large participation de prêtres, de diacres, de religieux et de laïcs (peut être à travers délégués diocésains)". Nuntia 2 (1976) 51; see also Nuntia 7 (1978) 21.

Thus, according to the new Oriental Code there is only one synod for the whole patriarchate, which elects the patriarch and the bishops and which is the unique legislative organ that makes laws (leges ferre) for the entire patriarchal Church. This synod is equally the supreme judicial authority of the same Church. The patriarch is the president of the synod who retains almost complete administrative authority, though limited in certain cases by the necessity of consent or auditio of the synod.³² The so called patriarchal synod of Cleri Sanctitati (CS 340-342), in which non-episcopal persons also participated, is eliminated. The permanent synod, which is part of the patriarchal curia, has no proper synodal functions, but is obliged by common law to give consent or counsel to the patriarch in the administration of important matters.

All other institutions which have only a consultative vote are not called synods in the new Code but conventus or assemblies because, according to the Eastern tradition, synods always imply a decisive faculty, namely the existence of a deliberative vote.33 Accordingly, in the new Code there is a patriarchal assembly or conventus patriarchalis, which is a consultative body of the entire Church to assist the patriarch and the synod of bishops in dealing with matters of major importance and in which a wide participation of priests. religious and laity is ensured (cc. 140-145). Moreover, there is the assembly of hierarchs of several Churches sui iuris (conventus hierarcharum plurium Ecclesiarum sui iuris). who exercise their authority in the same region or nation for enabling these hierarchs to work for the common good of the Churches by fostering unity of action and promoting common endeavors (c. 322). The decisions of this assembly even if unanimous, lack juridical force unless approved by the Apostolic See (c. 322 § 2). There is also an eparchial assembly (conventus eparchialis), which comprises the eparchial bishop and representatives of the clergy, religious and laity of the epa rchy (c. 238). Its authority is consultative since only the eparchial bishop has legislative authority in the eparchy (c. 241).

³² Nuntia 7 (1978) 23; auditio only two times - cc. 82 § 3 & 108 § 2.

³³ Cf. Nuntia 7 (1978) 24.

2.2. The Position of the Canons on the Synodal Structure

In the motu proprio, Cleri Sanctitati Chapter VI of Title IV entitled De patriarchis deals with the different aspects of the patriarchate such as the election of the patriarch, the rights and obligations of the patriarch, the privileges of the patriarch, etc. On the other hand, all kinds of synods are located after the canons on archbishops and other metropolitans in Chapter VIII, entitled De synodis patriarchalibus, archiepiscopalibus, provincialibus, plurium rituum vel plurium provinciarum, in a manner which does not highlight the important role of the synod of bishops of a patriarchal Church. However according to the genuine tradition of the Eastern Churches the patriarchate cannot be thought of without the synod which is the supreme authority of a Church, while the patriarch, the head of the synod, is considered primus inter pares in accordance with the Apostolic Canon thirty-four, whose prime duty is to ensure the proper functioning of the synod. Because of the paramount importance and the unique character of synods in the Oriental Churches, reconfirmed by the theology of Vatican II, especially by its doctrine of the collegiality of bishops, it seemed opportune for the Coetus of Sacred Hierarchy to divide chapter VIII of CS and insert the section on patriarchal synods among the canons on De patriarchis.34 Though some suggested that the title De Synodis be inserted before De Electione patriarcharum, the Coetus in 1977 decided to place it after that of De iuribus patriarcharum and before that of De Curia patriarchali, so that the synod may not appear as an

^{34 &}quot;Étant donné l'importance et le caractère particulier des Synodes dans les Églises Orientales - originalité qui fut confirmée à nouveau et étayée de solides fondements théologiques dans les textes du Concile Vatican II sur la Collégialité -, il a semblé opportun de fragmenter le Caput VIII du CS pour traiter à part les questions concernant les Synodes patriarcaux, provinciaux, interprovinciaux et interrituels et insérer dans le CICO les sections des canons correspondantes, aux emplacements qui paraîtront les mieux appropriés. Le Groupe d'Étude tomba rapidement d'accord sur l'opportunité d'insérer la section sur les Synodes patriarcaux parmi les canons De Patriarchis". Nuntia 7 (1978) 22-23.

institution of second order as in CS chapter VIII, comparable to an organ of service to the patriarch.³⁵

2.3. The Significance of the New Name "Synod of Bishops of the Patriarchal Church"

The synods of the patriarchate are considered in Cleri Sanctitati as synods of the patriarch and not of the "Church" and therefore, are often called patriarchal synods. Even the Second Vatican Council in Orientalium Ecclesiarum, number 9. used the phrase, "patriarchs with their synods" (Patriarchae cum suis synodis). This expression creates the impression that the synod depends upon the patriarch as an organ of the patriarch. This does not correspond to the "sacred canons" of the first millennium which, without any shadow of doubt. considered the synod of bishops of a Church sui iuris even superior to the patriarch, in such a way that, if necessary, the synod could proceed to the deposition of the patriarch.³⁶ The synod of bishops canonically convoked and presided over by the patriarch in his function as primus inter pares constitutes. the supreme authority of a Church. The function of the patriarch is in the synod and with the synod, and that of the synod is with the patriarch. The patriarch is always the first member of the synod. The synod of bishops is not an organ of the patriarch but the supreme authority of a Church, of which the patriarch is the head. Therefore, the study group thought of changing the name of patriarchal synod. Suggested was the name Perfecta synodus, referring to the ancient tradition or Sancta Synodus as it is used among the Orthodox Churches. But the study group rejected these two suggestions because it desired to have the word episcoporum in the title itself. Finally the title Synodus Episcoporum Ecclesiae Patriarchalis was accepted.37

³⁵ Cf. Nuntia 7 (1978) 23.

³⁶ Cf. I. ZUZEK, "The Patriarchal Structure according to the Oriental Code", in C. Gallagher, ed., The Code of Canons of the Oriental Churches: An Introduction, Rome 1991, 44.

³⁷ Cf. Nuntia 7 (1978) 24.

The new Oriental Code, therefore, uses the title Synodus Episcoporum Ecclesiae Patriarchalis or Synodus Episcoporum Ecclesiae Archiepiscopalis Maioris. From the word episcoporum used in the title itself, it is clear that the synod is of the bishops, thus excluding all non-episcopal participation. Similarly, it makes clear that the synod is not of the patriarch, namely an organ of the patriarch that depends upon him but an organ of the Church. The adjective "patriarchal" or "major archiepiscopal" distinguishes this synod from the Roman synod of bishops instituted by Pope Paul VI on 15 September 1965 by the motu proprio Apostolico sollicitudo. When applied to different Churches, it would be better said the synod of bishops of the Maronite Church, the synod of bishops of the Syro-Malabar Church, etc.

Members of the Synod of Bishops

According to CS, for the synod of election of the patriarch and the bishops, all and only the bishops of the same Church, including titular bishops, enjoy an active vote if they have been lawfully elected and confirmed, even though they have not received episcopal consecration.³⁹ However, for the so-called patriarchal synod, in addition to those who are mentioned above, the apostolic administrators of eparchies, the exarchs, the administrators of vacant sees, the president of an association of a monastic confederation, the president of a monastic confederation and the supreme superiors of clerical religious institutes must be called.⁴⁰ Therefore, non-episcopal persons may also participate in this synod. But according to the new Code there is only one synod, and non-episcopal persons are not among its members. Canon 102, which deals with membership in the synod, states:

Can. 102 § 1. All and solely ordained bishops of the patriarchal Church wherever they are constituted,

³⁸ Cf. AAS 57 (1965) 295-296.

³⁹ CS cc. 224 & 252 § 2.

⁴⁰ CS cc. 341-342.

excluding those mentioned in can. 953 § 1 or those who are punished by canonical penalties mentioned in cann. 1433 and 1434, must be called to the synod of bishops of the patriarchal Church.

- § 2. With regard to eparchial bishops constituted outside the territorial boundaries of the patriarchal Church and titular bishops, particular law can restrict their deliberative vote, with due regard for the canons concerning the election of the patriarch, bishops and candidates for office mentioned in can. 149.
- § 3. To expedite certain matters, according to the norm of particular law or with the consent of the permanent synod, others can be invited by the patriarch, especially hierarchs who are not bishops and experts to give their opinions to the bishops gathered in the synod with due regard for can. 66 § 2.

3.1. Only Bishops as Members of the Synod

As we have already seen, the new Code does not designate different synods as did CS, but only one synod, namely that of the bishops of the respective Church. Nonepiscopal participation is excluded from the synod according to the tradition of the undivided Church. In the first seven ecumenical councils, and in important provincial synods which played a unique role in Oriental canonical legislation, namely the synods of Ancyra, Gangra, Neo-Cesarea, Antioch, Laodicea, Carthage, and Constantinople (394), only bishops participated, though their number varied. Thus a mark of the synods of the ancient Church was that they were composed solely of bishops, who represented their eparchial Churches at the synod and stood not only for themselves but also for their Churches. If some non-episcopal experts participated in some synods, they did so only in an advisory capacity. In

⁴¹ Cf. Nuntia 7 (1978) 21.

⁴² Cf. WCC, Councils and the Ecumenical Movement, 13; J. D. ZIZIOULAS, "The Development of Conciliar Structures", 40-41.

accordance with this tradition the Eastern Code decrees that only bishops participate in the synod with deliberative vote.

3.2. Only Ordained Bishops of the Same Church as Members of the Synod

According to CS, those persons who are elected and confirmed are also members of the synod, although they have not yet received episcopal consecration (CS cc. 224 § 1 & 340). According to the new Code, however, all and only ordained bishops of the same Church (omnes et soli Episcopi ordinati eiusdem Ecclesiae) can participate in the synod. Thus those who are elected and proclaimed but have not vet received episcopal consecration are excluded. This agrees with the common tradition of the Church regarding the episcopate reestablished by Vatican II.43 According to the theology of Vatican II. nobody becomes a bishop by appointment or election but by episcopal ordination. Bishops also receive the tria munera of sanctifying, teaching and ruling by the same episcopal consecration.44 In harmony with the common tradition of the Church, reinstated by Vatican II, the new Code permits only ordained bishops to participate in the synod.

Similarly, only ordained bishops of the <u>same Church</u> are members of the synod. Therefore ordained bishops of other Churches *sui iuris* exercising their ministry in the same territory, or persons originally of the same Church but ordained bishops for the universal Church (e.g. for the Roman Curia) or for another Church *sui iuris*, are not members of the synod.⁴⁵

⁴³ Cf. Nuntia 7 (1978) 26.

⁴⁴ LG 20-21; see also P. PALLATH, The Synod of Bishops of Catholic Oriental Churches, 63-71.

⁴⁵ There are some bishops and archbishops in India who are by birth Syro-Malabar, but later adopted the Latin Rite and are now ordained for the Latin Church. They cannot participate in the synod of the Syro-Malabar Church. Similarly a bishop ordained for the Apostolic See cannot participate in the synod of the mother Church.

3.3. The Membership of Bishops Outside the Territory

According to the canons of the *motu proprio* CS, the synod of bishops and the patriarch have practically no authority over the faithful outside the territory, and the bishops constituted outside the territory have no juridical relationship with the synod or patriarch.⁴⁶ Only those bishops and hierarchs who are subject to the patriarch are called together to a patriarchal synod (c. 340 § 1). Similarly for the synod of election, the bishops of the same patriarchate are to be called.⁴⁷ The bishops outside the territory are directly appointed by the Bishop of Rome, and consequently they directly depend upon him, without any juridical relationship with the synod of bishops or patriarch.

The Second Vatican Council, in its decree *Orientalium Ecclesiarum*, for the first time treated the juridical status of Eastern bishops who are exercising their ministry outside the delimited territory by introducing the concept of aggregatus. According to the decree, "wherever a prelate of any rite is appointed outside the territory of his patriarchate, he remains attached to the hierarchy of his rite, in accordance with canon law".⁴⁸ Later the Congregation for the Oriental Churches determined the juridical significance of aggregation in a Declaration in March 1970.⁴⁹ Regarding the membership of the hierarchs set up outside the limits of the patriarchal territory in the synod of the mother Church, the Declaration states:

⁴⁶ The canons of CS which deal with such questions are 5, 22, 216 § 2 n. 2, 240 §2, 243 § 1, 260 § 1 n. 2, 261 and 262; cf. I. ZUZEK, "Canons Concerning the Authority of the Patriarchs over the Faithful of Their Own Rite Who Live Outside the Limits of Patriarchal Territory", Nuntia 6 (1978) 14-15; N. EDELBY, "Scope of Patriarchal Authority Outside the East", The Jurist 29 (1969) 178-179; J. CHIRAMEL, The Patriarchal Churches in the Oriental Code, Alwaye 1992, 142-146.

⁴⁷ Cf. cc. 224 § 1 and 252 § 2 n. 1; cf. Nuntia 6 (1978)14-15.

⁴⁸ OE 7; For the analysis of the concept "aggregatus", C. PUJOL, "De sensu vocis "aggregatus" (Vaticanum II, Decr. "Orientalium Ecclesiarum", n. 7)", *Periodica* 60 (1971) 251-271.

⁴⁹ AAS 62 (1970) 179. For the interpretation of this declaration, C. PUJOL, "Adnotationes ad Declarationem practicam vocis "aggregatus", *Periodica* 59 (1970) 344-354.

- 1. Oriental hierarchs who have been set up outside the limits of the patriarchal territory can participate with deliberative vote in the patriarchal synods of their own rite, whether these pertain to elections or to business matters.
- 2. The patriarch or, if the see is vacant or impeded, the patriarchal administrator is obliged to summon to the synods mentioned in no.1 all and each of the hierarchs of his rite who have been set up outside the boundaries of the patriarchal territory.⁵⁰

Accordingly the bishops of the same Church constituted outside the territory can participate in the synods of the mother Church whether of elections (of patriarch and bishops) or of business matters with deliberative vote. Though the patriarch is bound to convoke these bishops to the synod, they have no obligation to be actually present.

The canons of the new Code with regard to the synodal rights outside the territory of the patriarchal Churches are formulated on this Declaration with a view to strengthen the ties of the aggregates with the mother Church as much as possible. In the first stage of the revision, three texts were proposed for discussion concerning the relationship of the bishops outside the territory with the mother Church:

- 1. Text A: the text of the of the Declaration numbers 1 & 2 of the Congregation for the Oriental Churches published in March 1970 (which we cited above) with some variations in terminology. According to this, the bishops outside the territory are equal to those inside regarding synodal rights, though they have no obligations.
- 2. Text B: according to this text proposed by the Relator, the patriarchal administrator must convoke all the bishops who are constituted outside the territory for the election of the patriarch. These bishops have deliberative vote and a

⁵⁰ Declaration n. 1. Hierarchae orientales extra fines territorii patriarchalis constituti, in Synodis patriarchalibus proprii ritus, sive electionum sive negotiorum, cum suffragio deliberativo partem habere possunt. n. 2. Patriarcha et, Sede vacante vel impedita, Administrator patriarchalis convocare tenetur ad Synodos, de quibus n. 1, omnes et singulos Hierarchas sui ritus extra fines territorii patriarchalis constitutos. AAS 62 (1970) 179.

grave obligation to participate in the synod. They also participate in the synod with deliberative vote regarding matters pertaining to liturgical laws since these laws have universal application. For matters relating to the territory of the patriarchal Church, the aggregates have only a consultative vote, unless the synod of each Church grants them a deliberative vote in particular law. When the law requires the consent or counsel of the synod of bishops, for the validity of the act it is enough to convoke those bishops who are exercising their ministry within the territory without prejudice to the right of the patriarch to convene also the other bishops (even with deliberative vote). As a general principle the bishops set up outside the territory are obliged to take part only in the synods which conduct elections and treat liturgical matters.⁵¹

3. Text C: the bishops constituted outside the territory are fully equated with other bishops of the same Church with respect to synodal rights and obligations. Liturgical laws enacted by the synod of bishops and promulgated by the patriarch have the force of law everywhere in the world; but disciplinary laws and other decisions of the synod are not

⁵¹ Text B § 1. Sede patriarchali vacante, Administrator Patriarchalis convocare tenetur ad Synodum electionis Patriarchae omnes Episcopos Ecclesiae sui ritus extra territoria Ecclesiae patriarchalis constitutos, qui gravi obligatione, tenentur Synodo interesse.

^{§ 2.} Convocari debent iidem Episcopi ad ceteras Synodos episcoporum in iisque suffragio deliberativo gaudent leges liturgicas quod attinet; cetera negotia quod attinet, iidem Episcopi vocem nonnisi consultivam habent, nisi Synodus ipsa, lege particulari vel decisione in singulis casibus lata, ipsis vocem deliberativam concedat.

^{§3.} Quoties ius requirit consensum vel consilium Synodi episcoporum, requiritur et sufficit ad valide agendum ut Patriarcha ad Synodos convocet illos tantummodo episcopos qui de territorio Ecclesiae cui praeest sunt, firmo iure Patriarchae etiam ceteros episcopos sui ritus cum voce deliberativa hisce in negotiis admittendi.

^{§ 4.} Firmo § 1, episcopi extra territoria Ecclesiae patriarchalis constituti gravi obligatione sessionibus Synodi episcoporum interesse non tenetur nisi quando agatur de legibus liturgicis vel negotiis in quibus ipsi patriarchae auctoritati immediate subduntur. Nuntia 6 (1978) 31.

valid outside the territory of a patriarchal Church, unless by explicit recognition of the Holy See.⁵²

Text C was provisionally accepted by the study group because it helps to strengthen the relationship of the bishops outside the territory with the mother Church, while at the same time confining the jurisdiction of the patriarch and synod of bishops within the territorial boundaries of the patriarchal Church. Again, this text has undergone many revisions. The main redactional changes may be the recognition in clear terms that the bishops outside the territory have the same synodal rights and obligations, along with the affirmation that they have deliberative vote as do other bishops, though each Church can restrict this right in particular law, except in cases of the election of the patriarch and bishops. Another change is the right of each bishop outside the territory to grant legal validity to synodal decisions in matters within his competence.⁵³

⁵² Text C § 1. Episcopi orientales extra territoria Ecclesiae Patriarchalis constituti Synodos episcoporum propriae Ecclesiae quod attinet ceteris episcopis eiusdem Ecclesiae plene aequiparantur.

^{§ 2.} Leges a Synodo episcoporum latae et a Patriarcha promulgatae si liturgicae sunt ubicumque terrarum vigent, si vero sunt disciplinares vim obtinent in universo territorio Ecclesiae Patriarchalis; in ceteris vero mundi partibus vigent postquam a Sede Apostolica recognitae fuerint.

^{§ 3.} Quae de legibus disciplinaribus in § 2 dicuntur valent etiam de ceteris decisionibus Synodi, quae alibi, quam in solo territorio Ecclesiae Patriarchalis, vim habere possunt. *Nuntia* 6 (1978) 32.

⁵³ The text formulated with these changes is as follows: § 1. Ad Synodus Episcoporum Hierarchae Orientales extra territoria Ecclesiae Patriarchalis constituti convocandi sunt, cum omnibus iuribus et obligationibus synodalibus coeterorum Episcoporum eiusdem Ecclesiae, nisi ius particulare eorundem iura, votum deliberativum praesertim quod spectat, coarctet, firmis canonibus de electione Patriarcharum et Episcoparum.

^{§ 2.} Leges a Synodo episcoporum latae et a Patriarcha promulgatae si liturgicae sunt ubicumque terrarum vigent, si vero disciplinares vel si de ceteris decisionibus Synodi agatur vigent (vim iuris habent) in territorio Ecclesiae Patriarchalis.

^{§ 3.} Leges disciplinares necnon ceterae Synodi decisiones extra territoria Ecclesiae Patriarchalis vigent postquam a Sede Apostolica aprobatae fuerint, firmo iure Hierarcharum Orientalium legibus vel decisionibus synodalibus, quae eorum competentiam non excedunt, in propriis eparchiis vim iuris dare. *Nuntia* 6 (1978) 33.

In this modified form the text was incorporated into the Oriental Code without any substantial change under the title IV. Chapter VIII. De territorio Ecclesiae patriarchalis atque de potestate patriarchae et synodorum extra hoc territorium (cc. 146-150). Thus, according to the new Code, the bishops set up outside the territory have the same rights and obligations which other bishops of the same Church enjoy (c. 150 § 1). Canon 102 of the Code, without making any distinction among the bishops of a Church, stipulates that "all and only ordained bishops of the same Church wherever they are constituted" are members of the synod. From the phrase, "wherever they are constituted", it is evident that the bishops outside the territory are also members of the synod. According to ius commune, all bishops without any distinction have a deliberative vote in the synod, but ius particulare can curtail the deliberative vote of bishops outside the territory. except in the cases of election of patriarchs, bishops and candidates for episcopacy outside the territory.⁵⁴ Therefore all ordained bishops are members of the synod and the word aggregatus does not appear in the Code.

3.4. Membership of Titular Bishops

Titular bishops are those to whom no eparchy has been entrusted for governing in their own name, no matter what other function they exercise or have exercised in the Church.⁵⁵ Therefore, auxiliary bishops, coadjutor bishops (cc. 212-218)

⁵⁴ This possibility is justifiable on the ground that normally the synodal decisions have no legal force outside the territory, except in matters of liturgy. Therefore it seems unreasonable that the votes of these bishops condition the decisions concerning matters within the patriarchate. When SCCHEO was sent for consultation, four organs proposed to obstruct the possibility of coarctare iura synodalia of the bishops constituted outside the territory of the patriarchal Church. On the other hand, two other organs suggested that they should not have consultative voice for questions concerning the patriarchal Church within their historic limits. But the Coetus considered it opportune to recognize in ius commune the equality of rights for the members of a synod, leaving the possibility for each sui iuris Church to limit the synodal rights of the bishops mentioned above, especially their deliberative vote in certain matters. Nuntia 22 (1986) 110.

⁵⁵ CCEO c. 179; Cf. CIC c. 376.

and retired bishops are "titular". 56 In addition, the bishops of the patriarchal curia are also titular since they are not entrusted with an eparchy (c. 87).

According to the tradition of the Eastern Churches. bishops participate in synods or councils not as private individuals, but as heads of Christian communities or particular Churches. Each bishop represents his particular Church and brings this Church to the whole of ecclesial unity with its faith as it is epiphanized, lived and experienced in his community. Therefore, a synod or council means not simply the gathering of bishops, but the meeting or communion of Churches and their faith. Thus the whole Christian community in a diocese speaks through the mouth of its bishop. There is no bishop without a Church, since no episcopal ordination can be made in an absolute manner. Even today according to the Orthodox canon law only eparchial bishops take part in synods with deliberative vote. 57 About this particular point Zizioulas writes that in the Eastern Orthodox Church "only the diocesan bishops are allowed to vote in a synod. This condition speaks loudly of the fact that a bishop is not a member of a council in himself but as the head of a community. To deprive of this right someone who is in all aspects a 'bishop' except in not heading a community would be absurd had it not been for the interpretation we are giving here, namely that a bishop participates in a council only as the head of his community".58

Cleri Sanctitati, the former law of the Catholic Eastern Churches, without making any distinction, stipulated that titular bishops also participate in synods with decisive vote, just like the eparchial bishops. ⁵⁹ In harmony with CS, in the

⁵⁶ Cf. Nuntia 23 (1986) 6-9; M. BROGI, "Norms on Eparchies and Bishops", in J. Chiramel & K. Bharanikulangara, eds., The Code of Canons of the Eastern Churches: A Study and Interpretation, Alwaye 1992, 109-110.

⁵⁷ Cf. J. D. ZIZIOULAS, *Being as Communion*, 198; "The Institution of Episcopal Conferences", 377.

⁵⁸ J. D. ZIZIOULAS, Being as Communion, 241.

⁵⁹ CS cf. cc. 224; 252 § 2 n. 1; 341.

initial texts formulated by the Relator and subjected to the discussion of the study group, no distinction was made between eparchial bishops and titular bishops as regards synodal rights. ⁶⁰ The provisional text accepted by the study group also made no distinction between eparchial bishops and titular bishops. ⁶¹ Later one consultor pointed out that the inclusion of titular bishops in the synod with deliberative vote seemed to be contrary to the norms established by Vatican II requiring consideration of the traditions of Orthodox Churches, which in general do not admit titular bishops in the synod. ⁶² The study group, taking into account all these aspects, decided to maintain in *ius commune* the participation of titular bishops with deliberative vote, but at the same time permit the *ius particulare* of each Church to restrict their right of deliberative vote. ⁶³

Giving their observations to Schema Canonum de Constitutione Hierarchica Ecclesiarum Orientalium⁶⁴, two organs of consultation suggested to eliminate from ius commune the possibility to curtail the deliberative vote of

⁶⁰ The initial texts can be found in Nuntia 7 (1978) 25-26.

⁶¹ The text accepted by the Study Group was as follows: "Ad Synodum Episcoporum Ecclesiae patriarchalis vocantur in eaque suffragio deliberativo gaudent omnes et soli Episcopi consecrati eiusdem Ecclesiae aggregati". Nuntia 7 (1978) 26.

⁶² The Relator reports: "En ce qui concerne le premier alinéa, à propose de l'intervention très importante d'un consulteur déclarant ne pas pouvoir accepter le texte formulé le 10 janvier, parce qu'il lui paraissait être contradictoire avec les normes établies par Vatican II, l'on prit de nouveau en considération la tradition des Églises Orthodoxes, qui en général n'admettent pas les évêques titulaires dans le Synode". Nuntia 7 (1978) 27.

^{63 &}quot;Le Groupe d'Étude, tout bien considéré, ne voulait point proposer d'enlever aux différentes Églises la possibilité d'exclure les évêques titulaires du vote délibératif dans les Synodes. Il voulait donc insérer dans le texte une expression qui permette au ius particulare d'ôter aux évêques titulaires le droit de vote délibératif, qui est pourtant maintenu par le ius commune". Nuntia 7 (1978) 27. Thus the following canon was also formulated, "Ad Synodum Ecclesiae Patriarchalis vocantur in eaque suffragio deliberativo gaudent omnes et soli Episcopi ordinati eiusdem Ecclesiae ubicumque constituti, nisi ius particulare, suffragium deliberativum Episcoporum titularium quod attinet, aliter statuat". Nuntia 7 (1978) 27.

⁶⁴ This Schema with an introduction can be seen in Nuntia 19 (1984) 3-94.

titular bishops.⁶⁵ This suggestion was rejected after a long debate with 5-4-0 votes and thus the clause "ius particulare eorum votum deliberativum coarctare potest" remains in the canon.⁶⁶

Another organ of consultation strongly insisted that in order to maintain the Oriental theology and ancient tradition it would be necessary to affirm clearly in the Code that only enarchial bishops (already ordained) are members of the synod and, as an exception, permit the ius particulare of each Church to admit to the synod titular bishops and to specify the juridical validity of their votes (deliberative or consultative).67 This was also rejected with a vote of 6-2-1. According to the Relator the principle that all bishops of a Church are members of the synod. is considered necessary not only because the synod is a manifestation of the unity of the whole patriarchal Church, but also because it conforms to the tria munera, which every bishop receives in the same episcopal consecration according to the doctrine of Vatican II. 68 Therefore according to ius commune the titular bishops can participate in the synod with active vote. but each Church sui iuris has the possibility to restrict their active vote in ius particulare, except in cases of the election of patriarch, bishops and candidates for episcopacy outside the territory (c. 102 § 2). 69,

^{65 &}quot;Due di esse consistevano nel precludere alle singole Chiese, nello 'ius commune' stesso, la possibilità di limitare il voto deliberativo dei vescovi titolari, 'aggregati' e dimissiori". Nuntia 22 (1986) 76.

⁶⁶ Nuntia 22, (1986) 78.

^{67 &}quot;In essa il relativo Organo di consultazione insisteva fortemente che, 'per mantenersi alla teologia e alla tradizione orientale antica' bisognerebbe in anzitutto 'affermare chiaramente nel Codice che solo i Vescovi eparchiali già ordinati sono membri del Sinodo' e, in via eccezionale, permettere allo ius particulare delle singole Chiese, di ammettere al Sinodo i Vescovi titolari e di specificare il valore giuridico dei loro suffragi ('deliberativo' oppure 'consultivo')". Nuntia 22 (1986) 77.

⁶⁸ Nuntia 22 (1986) 78.

According to the synodal statutes of the Syro-Malabar Church, all and solely the ordained bishops whether eparchial, titular or emeritus, constituted inside or outside the territorial boundaries are members, and they enjoy deliberative vote in the Synod. Synodal News, (February 1994) 53.

As we accentuated above, according to the Eastern tradition bishops participate in a synod not as private persons. but as heads of Christian communities or enarchies. representing them. Consequently the participation of a bishop with a deliberative vote in the synod who has no Christian community to represent is incomprehensible. It would be more consonant with the Oriental tradition to restrict the deliberative vote of titular bishops in such a way that each diocese has only one deliberative vote in the synod. Otherwise a diocese in an abnormal state (an eparchial bishop with a coadiutor or several auxiliaries) could enjoy a greater weight in the synod. Coadjutor and auxiliary bishops who are assistants of patriarch or eparchial bishops may participate in the synod also as assistants (with a consultative vote) and not as equals to eparchial bishops who are heads of Christian communities. The participation of the retired bishops who are not exercising any pastoral function in the Church with a deliberative vote in the synod just like an eparchial bishop seems to be an anomaly.

3.5. Participation of Non-episcopal Persons in the Synod

According to the basic orientations fixed by the study group and in the initial texts formulated by the Relator, non-episcopal participation was completely excluded from the synod. Some consultors pointed out that by their nature consecrated bishops participate in the synod in as much as they represent an eparchy or diocese; however the participation of other persons at least as eventual expert consultors should not be completely excluded. Therefore, the study group decided not to exclude this possibility, and a second part was added to the initial canon which dealt with the membership in the synod of bishops, according to which non-episcopal hierarchs and experts can be admitted to the synod for expediting certain matters according to the norm

⁷⁰ Nuntia 7 (1978) 25.

⁷¹ Nuntia 7 (1978) 26.

of particular law or if majority of the synodal members consent, except in the case of an election of the patriarch.⁷²

Later this canon was re-examined and the study group decided for practical reasons to drop the words "vel si major pars Synodi sodalium ad id consentit" and to reserve to the patriarch with the consent of the permanent synod the right. to call to the synod of bishops non-episcopal hierarchs with purely consultative vote. 73 With these changes the canon was incorporated into the new Code as canon 102 § 3 which stipulates that according to the norm of particular law or with the consent of the permanent synod, for expediting certain matters, others, especially non-episcopal hierarchs and experts, can be invited by the patriarch to give their opinions to the bishops gathered in synod, except in the case of an election of the patriarch, for which non-episcopal participation is completely forbidden with the exception of a secretary and two tellers who can be priests or deacons.74 Therefore. according to the new Code, the synod of bishops can enact particular law which can determine in what situation nonbishops can be admitted. In cases not determined by particular law the permanent synod is competent to grant approval for the admittance of non-bishops to the synod.75

Nuntia 7 (1978) 26. The text was as follows: "Firmo can. 3 de electione Patriarchae, pro ceteris negotiis expediendis, ad normam iuris particularis vel si maior pars Synodi sodalium ad id consentit, alii vocari possunt, Hierarchae non episcopi praesertim ac periti, ad eorum opiniones ac vota Episcopis (in Synodo congregatis) pandenda".

⁷³ The second part of the respective canon was reformulated as follows: "Firmo can. 3 de electione Patriarcharum, pro certis negotiis expediendis, ad normam iuris particularis vel de consensu Synodi permanentis, alii a Patriarcha vocari possunt, Hierarchae non Episcopi praesertim ac periti, ad eorum opiniones ac vota Episcopis in Synodo congregatis pandenda". Nuntia 7 (1978) 27.

⁷⁴ CCEO cc. 66 § 2 & 71 § 1.

⁷⁵ J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, New York 1992, 286. According to the Synodal Statutes of the Syro-Malabar Church, "For the effective carrying out of certain matters, the Major Archbishop, with the consent of the permanent Synod, can invite others, especially hierarchs who are not bishops, and experts to give their opinions to the bishops in the Synod with due regard for c. 66 § 2 (c.102 § 3)". Synodal News, (February 1994) 54.

3.6. Exclusion of Ordained Bishops from the Synod

We have already seen that only ordained bishops are members of the synod of bishops of a Church *sui iuris*; however ordained bishops if they are ineligible to vote according to canon 953 § 1 as well as those who are subject to canonical penalties in accordance with canons 1433 and 1434 are excluded from the synod. According to these canons the following bishops are excluded from the synod:

- 1. A bishop who is incapable of human act;
- 2. A bishop who lacks active voice;
- 3. A bishop who has publicly rejected the Catholic faith, who has publicly defected from communion with the Catholic Church or incurred major excommunication;
- 4. A bishop who has been demoted to a lower order;
- 5. A bishop who is deposed from office.

In summary we can say that all ordained eparchial bishops, coadjutor bishops, auxiliary bishops and resigned bishops of a patriarchal or major archiepiscopal Church are equally members of the synod of the same Church. According to common law all these bishops have a deliberative vote in the synod, but particular law can curtail the deliberative votes of eparchial bishops outside the territory and of titular bishops (coadjutor, auxiliary and resigned bishops) except in the case of election of the patriarch or major archbishop, as well as bishops and candidates for episcopacy outside the territory.

4. Frequency of Session

According to CS the patriarchal synod is to be held as often as the patriarch with the consent of the permanent synod deems it necessary, and at least every twenty years.⁷⁶ The

^{76 &}quot;Synodus patriarchalis, archiepiscopalis et provincialis celebrentur quoties Patriarcha vel Archiepiscopus, consentiente Synodo permanenti, aut Metropolita, consentientibus Episcopis comprovincialibus, id necessarium iudicaverit et vicesimo saltem quoque anno". CS c. 344.

synod of election of the patriarch is to be held not later than one month from the day of vacancy, save for the particular law which establishes a shorter time (CS c. 223).

Concerning the frequency of the synod of bishops of the patriarchal Churches, the study group, which fixed the basic orientations in 1975, desired that a regular and obligatory rhythm be fixed for the convocation of the synod. On the other hand, it may be established that a group of bishops (one third) could demand an extraordinary convocation of the synod and insert into the agenda the questions they want.⁷⁷

Concerning the frequency of synods, as we have seen in the first chapter, Apostolic Canon 37, the Synod of Nicaea canon 5, the Synod of Chalcedon canon 19 and the Antiochean Synod canon 20 legislated that synods should be held at least twice a year; whereas the Synod in Trullo canon 28 and the Second Synod of Nicaea canon 6 obligated the convocation of synods at least once an year. According to the Relator these canons refer to the provincial or metropolitan synods and. therefore, cannot be proposed in reality as "certain sources" for the frequency of the synods of the patriarchal Church. which are the convocation of all the bishops of a Church, an instance much higher than the provincial synods; nor it does appear good to fix their frequency at twice a year or in precise terms of years. 78 However, it is evident that a more frequent convocation of synods is possible because of modern communication and transportation facilities and is greatly desirable from the point of view of the exercise of collegiality in the spirit of Apostolic Canon 34 and the doctrine of collegiality of Vatican II.79 On the basis of these reflections the study group on 22 January 1977 accepted a canon which

⁷⁷ Nuntia 2 (1976) 51; Nuntia 7 (1978) 30.

Nuntia 7 (1978) 30. However we have to remember that many of the functions that were accomplished by the provincial synods, such as election of bishops, legislation of laws and judicial sentences, are now performed by the patriarchal synods. Thus it seems that the canons regarding the frequency of synods are applicable also to patriarchal synods.

⁷⁹ Cf. Nuntia 7 (1978) 30.

did not fix the frequency of session in years but required the convocation of synods according to the needs of each Church.⁸⁰ This canon was accepted into the Oriental Code with redactional changes. Therefore, according to *ius commune* the synod of bishops must be convoked:

- 1. Whenever business is to be transacted which pertains to the exclusive competence of the synod of bishops or which requires the consent of the same synod in order to be done (c. 106 § 1, 1°). Matters which belong to the exclusive competence of the synod of bishops are mainly the election of patriarch, election of bishops, enactment of laws for the whole patriarchate and the final judgment in certain cases as the supreme tribunal of a Church *sui iuris*. Matters which require the consent of the synod of bishops are defined in the common Code.⁸¹
- 2. Whenever the patriarch with the consent of the permanent synod judges it necessary (c. 106 § 1, 2°). This is a repetition of CS canon 344 and it provides the patriarch with the freedom to convoke a synod with the consent of the permanent synod, whenever he judges that it is necessary.
- 3. Whenever at least one-third of the members request it for a given matter, always safeguarding the rights, established by the common law, of patriarchs, bishops, and other persons (106 § 1, 3°).82 By this clause the common law grants the bishops of each Church the right to demand the

⁸⁰ The canon accepted by the study group in 1977 is as follows: § 1. Synodus Episcoporum Ecclesiae patriarchalis convocari debet: quoties expedienda sunt negotia ad esclusivum competentiam ipsius Synodi pertinentia aut pro quibus peragendis consensus vel consilium Synodi requiratur; quoties tertia saltem pars Synodi sodalium, pro dato negotio, id postulaverit, salvis semper iuribus Patriarcharum, Episcoporum, aliarumque personarum in canonibus iuris communis statutis. § 2. Firma § 1 Synodus Episcoporum, lege ab ipsa Synodo lata, statis temporibus, etiam quotannis, convocari potest. Nuntia 7 (1978) 31.

⁸¹ I. ZUZEK, Index Analyticus Codicis Canonum Ecclesiarum Orientalium, Roma 1992, 330-331; see also the fourth chapter of this book.

⁸² For example the synodal statutes of the Syro-Malabar Church decree that "The Synod must be convoked at least once a year". Synodal News (February 1994) 58.

convocation of synod when one-third of them feel it necessary to treat a given matter.

4. In addition, ius commune provides each Church the right to legislate for the convocation of synods at the established times, even annually, in ius particulare (c. 106 § 2). Thus without demanding a rhythmic regular convocation of synods at fixed times and giving much freedom to the patriarch, bishops, and to the synod of bishops itself to legislate in particular law for the convocation of synods at established times, the common law provides for the proper functioning of the synods in accordance with Apostolic Canon 34 and the spirit of the doctrine of collegiality of bishops reestablished by Vatican II.83

5. The Obligation of Bishops to Attend the Synod

Since the synod of bishops with the patriarch is the highest authority for all the business of a patriarchal Church (OE 9), all consecrated bishops have the serious obligation to attend the synod, except the resigned bishops. Those bishops who have resigned from office have no obligation to attend the synod, though they have the right to be convoked. If a bishop considers himself to be detained by a just impediment, he is to expose his reasons in writing to the synod (c. 104 § 2). Those present at the opening session of the synod decide the legitimacy of the impediment. If the legitimacy of the impediment is not established, the bishop is to be counted among those who are obliged to attend and thus in the determination of the quorum. The bishops are obliged to attend the synod personally and are not allowed to send a proxy to the synod (c. 105).

⁸³ The only observation made about this canon when SCCHEO was sent to the hierarchies of the Oriental Churches was to divide the first part of the canon into three points as seen in the Code and to make the second part a unique canon in itself. This indicated that all were satisfied with the present provisions for the convocation of the synods. Nuntia 22 (1986) 80.

^{84 &}quot;Omnes Episcopi ad Synodum Episcoporum Ecclesiae patriarchalis legitime vocati gravi obligatione tenentur, ut eidem Synodo intersint eis exceptis, qui officio suo iam renuntiaverunt". C. 104 § 1.

Before the promulgation of the new Code, according to the declaration of the Congregation for the Oriental Churches (20 March 1970), the bishops constituted outside the territory had the right to be summoned to the synod but had no obligation to participate in it. Since canon 104 without making any distinction states that "all bishops lawfully called to the synod of bishops of the patriarchal Church are bound by a serious obligation to attend it", it is evident that the bishops outside the territory are also obliged to attend the synod even if their deliberative votes are restricted by particular law, except in cases of election of patriarch, bishops or candidates for episcopacy outside the territory.

6. The Quorum for a Canonical Synod and the Validity of Decisions

Cleri Sanctitati canon 346 establishes a general norm for the validity of synods, namely the absolute majority of the bishops who enjoy a decisive vote must take part. However for the election of the patriarch, two-thirds of those who enjoy active voice and who are not prevented by a lawful impediment are to be present for the synod to be canonical (CS c. 226 § 1).

The new Code substantially retains the same norm. According to *ius commune* any session of the synod of bishops is canonical and any given balloting is valid if the majority of the bishops who are obliged to attend the synod is present, except in the cases of the election of patriarchs, bishops or candidates for episcopacy outside the territory; the particular law can require a higher number of bishops for the fulfillment of the quorum. Bishops who are excluded from the session (cc. 953 § 1 and 1433-1434), those who have resigned from office (c. 210) or who have been excused for a justified reason are not obliged to attend the synod; therefore, the quorum is determined excluding such bishops.

⁸⁵ CCEO c. 107 § 1. For the election of the patriarch and bishops, the presence of two-thirds of the bishops who are obliged to be present are necessary. Cf. cc. 69; 149; 183 §§ 3, 4; for details see the Election of patriarchs and bishops in this book.

Provided that the required quorum is fulfilled, according to *ius commune*, that which is decided by an absolute majority of those who are present has the force of law. When the votes are equal, the person presiding can break the tie with his vote. If acquired rights of individuals are affected, the consent of each one of them is required (c. 924). However, *ius commune* grants the synod of bishops the right to establish norms to determine how many votes and balloting are required for the synodal decisions to acquire the force of law except in the election of the patriarch and bishops and candidates for episcopacy outside, for which special norms are given in the Code. ⁸⁶

7. The Convocation and Presidency of the Synod of Bishops

The patriarch, who is the father and head of a Church, is responsible for the proper canonical functioning of the synod of bishops. The patriarch is to convoke and preside over the synod except in the case of an election of a patriarch (c. 103). He is to open the synod of bishops and, with the consent of the same synod, to transfer, postpone, suspend and dissolve it (c. 108). Therefore, the patriarch is not absolutely free in such acts, he has to act according to the mind of the synod. For the election of the patriarch the synod is convoked by the administrator with the consent of the permanent synod (c. 65 § 1). Unless particular law establishes otherwise, the one who is elected by those present in the first session is to preside over the synod of election of a patriarch or major archbishop. Until such election the presidency is reserved to the administrator (c. 70)

Thus, except in the case of a vacant or impeded see, only the patriarch has the right to convoke the synod of bishops and preside over it; the bishops alone cannot do so even through a collective act. The bishops of a Church gathered in an assembly, without being convoked by the patriarch

⁸⁶ CCEO 107 § 2. Special norms for the election of the patriarch and the bishops can be seen in cc. 72; 149 & 183 §§ 3 and 4; see chapter heading 3.3.2, 3.3.2 and 4.5.1.2.

according to the norm of law or without his presidency, do not constitute a canonical synod. Although someone can substitute for the patriarch in certain assemblies such as the permanent synod (c. 116 § 2) and the patriarchal assembly, no such provision is made for a session of the synod of bishops, which indicates that the personal participation of the patriarch during the session is required.⁸⁷

8. The Statutes of the Synod of Bishops

The synod of bishops is a juridical person and as such needs regulations which precisely determine its structure and activities in accordance with ius commune. Statutes are ordinances established in aggregates of persons or things according to the norm of law that define more precisely the specific purpose, nature, government and operation of the juridical person (c. 922). The synod of bishops itself makes its statutes through which are provided a secretary of the synod, preparatory commissions, the order of procedure as well as other means which are considered effective for the attainment of its goals (c. 113). The synod of bishops can regulate in its statutes all those matters that are explicitly or implicitly left to ius particulare concerning the functioning of the synod in the common Code.88 the establishment of various commissions and committees deemed appropriate by the patriarch and the synod⁸⁹ and the procedure for the proper celebration of the synod.

⁸⁷ Cf. J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, 287; J. CHIRAMEL, "Hierarchical Structuring in the Oriental Legislation", in J. Chiramel & K. Bharanikulangara, eds., The Code of Canons of the Eastern Churches: A Study and Interpretation, Alwaye 1992, 100.

⁸⁸ For example: the restriction of the active vote of titular bishops and bishops outside territory c. 102 § 2; participation of non-episcopal persons in the synod c. 102 § 3; Establishment of a fixed time for the convocation of the synod c. 106 § 2; elevation of the requirement for a Quorum c. 107 § 1; concerning the number of ballots and votes c. 107 § 2; the time and manner of the promulgation of laws c. 111 § 1; obligation of secrecy c. 111 § 2; concerning tellers and secretary c. 71 § 1.

⁸⁹ For example, the liturgical commission and other commissions, which by law itself are attached to the patriarchal curia (c. 114 § 1); Ecumenical Commission (c. 904 § 2); Catechetical Commission (c. 622 § 1); etc.

Conclusion

In this chapter we have outlined the preliminary questions concerning the structure and organization of the synod such as membership, frequency of session, the obligation of bishops to attend the synod, the necessary quorum, the required majority for the validity of decisions, the presidency and the statutes of the synod. All the eparchial and titular bishops of a Church inside and outside the territory are members of the synod. According to *ius commune* all the bishops of a Church have active vote in the synod, though the active vote of titular bishops and bishops outside territory can be restricted by the synod in *ius particulare*, except in the cases of election of patriarchs, bishops and candidates for episcopacy outside the territory.

Chapter Three

THE MAJOR POWERS OF THE SYNOD OF BISHOPS

The synod of bishops of a patriarchal or major archiepiscopal Church, canonically convoked and presided over by the patriarch or major archbishop, is the highest authority of the same Church. In this chapter we outline the major powers of the synod of bishops according to the new Oriental Code in comparison with the old legislation (CS & SN). The major powers of the synod are legislative and judicial powers as well as the election of patriarchs and bishops. Canon 110, considered the most important and central canon of the whole Code, summarizes the major powers of the synod of bishops as follows:

Can 110 § 1. The synod of bishops of the patriarchal Church is exclusively competent to make laws for the entire patriarchal Church which obtain force according to the norm of can. 150 §§ 2 and 3.

- § 2. The synod of bishops of the patriarchal Church is a tribunal according to the norm of can. 1062.
- § 3. The synod of bishops of the patriarchal Church conducts the election of the patriarch, of bishops and of candidates for offices mentioned in can. 149.
- § 4. Administrative acts are not the competence of the synod of bishops of the patriarchal Church, unless for certain acts the patriarch determines otherwise or common law reserves some acts to the synod, with due regard for the canons which require the consent of the synod of bishops of the patriarchal Church.

1. Legislative Power of the Synod of Bishops

In Cleri Sanctitati, canon 243, which deals with leges ferre, is located under article two of chapter six which deals with the rights and obligations of the patriarch (cc. 240-282), and not under chapter eight, De Synodis Patriarchalibus, archiepiscopalibus, provincialibus, plurium ritum vel plurium

provinciarum. Therefore, it appears that leges ferre is a right of the patriarch. Canon 243 states:

- § 1 Laws which are not contrary to the universal law of the Church and to those which the Apostolic See enacted for the patriarchate, and which concern the whole patriarchate, or some part thereof, or a group of persons, can be made by the patriarch only in the patriarchal synod mentioned in c. 340 § 1.
- § 2 The patriarch must zealously provide for the promulgation of the laws enacted in the patriarchal synod, save for c. 350 § 1.
- § 3 The authentic interpretation of laws of the patriarchal synod until the next synod is a right of the patriarch, to be exercised with the advice of the permanent synod.
- § 4 n. 1 The patriarch is entitled to dispense from laws of the patriarchal synod for a good reason, in individual cases, even for the entire patriarchate. If the dispensation exceeds individual cases, the patriarch cannot grant it except for a grave reason and with the consent of the permanent synod;
- § 4 n. 2 A dispensation from a law of the patriarchal synod, which was refused by the local Hierarch, shall not be granted by the patriarch, except for a good reason and after having heard the Hierarch.

According to the canon, laws can be made by the patriarch, but only in the patriarchal synod which consists of all the bishops and some non-episcopal members in accordance with canon 340 § 1. The patriarch appears to be the legislator of the whole Church over which he presides, though he can make laws only in the patriarchal synod. The patriarch is also entitled to dispense from the laws of the patriarchal synod for a good reason in individual cases for the entire patriarchate. For a grave reason he can give a dispensation that exceeds individual cases with the consent of the permanent synod.

The Coetus of Sacred Hierarchy, which fixed the basic orientations of the synodal structure of Catholic Oriental Churches in 1975, decided that it belongs to the synod of bishops to make laws (leges ferre) for the whole patriarchal Church. The Coetus at the time of its meeting in 1975 found some incoherence in CS canon 243 concerning legislative power. According to CS. "laws which are not contrary [...] can be made by the patriarch only in the patriarchal synod". whereas in part three of the canon the same laws are called "laws of the patriarchal synod". In part four the patriarch is entitled to dispense from the laws of the "patriarchal synod" for a good reason, especially in individual cases.2 Therefore, the study group after long discussion decided to leave out CS canon 243 § 1 from De iuribus et obligationibus Patriarcharum, with the precise intention of inserting it under the title De Synodo Episcoporum, since it would seem more clearly that the power leges ferendi for the whole Church belongs to the synod of bishops and not to the patriarch or major archbishop.³ Thus in the new Code, the canons on the legislative power appear not in chapter two. De iuribus et obligationibus patriarcharum, but in chapter three. De Synodo Episcoporum Ecclesiae Patriarchalis, in a manner to indicate clearly that the only authority that can make laws for the whole patriarchal Church is the synod of bishops. According to canon 110 § 1 of the new Code, "the synod of bishops of the patriarchal Church is exclusively competent to make laws for the entire patriarchal Church which obtains force according to the norm of canon 150 §§ 2 & 3".

¹ Nuntia 2 (1976) 50.

^{2 &}quot;En ce qui concerne la potestas legislativa l'on remarquait déjà, lors de la réunion d'octobre 1975, une certaine incohérence dans le CS, can. 243. L'on trouve en effet dans ce canon, a. 1, que les lois qui 'sive integrum patriarchatum ipsae respiciant sive aliquam ipsius partem, seu personarum coetum, Patriarcha, tantum in sinodo patriarchali [...] ferre valet', tandis qu'au a. 3 ces mêmes lois sont appelées 'Leges Synodi Patriarchalis', ce qu'elles sont en effet, au point que dans l'a. 4 l'on se trouve contraint de concéder au Patriarche une faculté de pouvoir dispenser de ces mêmes lois, qui se réfère plutôt aux 'casus singulares'". Nuntia 7 (1978) 34.

³ Cf. Nuntia 7 (1978), 34.

1.2. The Legislative Power of the Synod of Bishops: the Enactment of the Particular Law of the Proper Church

The idea of a common Code for all the Catholic Eastern Churches evoked fear among some that such a Code would impose a strictly uniform discipline over the whole Christian Orient, jeopardizing the autonomy guaranteed by Vatican II and evacuating the genuine ecclesial traditions and particular canonical institutions developed by each Church in harmony with its own socio-cultural milieu. In this context the "Guidelines for the Revision of the Code of Oriental Canon Law", approved at the first Plenary Assembly of the Pontifical Commission of 18-23 March 1974, specified that "the new Code should limit itself to the codification of the discipline common to all the Oriental Churches, leaving to the competent authorities of these Churches the power to regulate by particular law all the matters not reserved to the Holy See".4

Other guidelines which underscore the necessity and utility of a single Code for the Eastern Churches do not deny but presuppose the juridical autonomy and legitimate diversity of the various Eastern Churches as we see below:

1. The legal heritage of the Oriental Churches is to a great extent founded on the same ancient canons that are to be met with in almost all Oriental canonical collections and on common traditions: this is apparent from the collections themselves, which often contain laws of identical tenor.

These canons and these traditions provide a common basis for a single code applicable to all the Oriental Churches.

2. However, there is no denying that differences exist among the various Oriental Churches even in the disciplinary norms. These are differences that have come about in the course of centuries for historical causes and "ob diversitatem quoque

⁴ Nuntia 3 (1976) 21; Cf. M. BROGI, "Le Chiese sui iuris nel Codex Canonum Ecclesiarum Orientalium", REDC 48 (1991) 539-541.

ingenii et vitae condicionum" (Unitatis redintegratio, n. 14) and that could today even give rise to difficulties and to a situation opposed to the movement towards that unity to which the world and all the Churches are tending and in which all Catholics should be deeply involved.

- 3. The experience gained from the application of the various Motu Proprio, by which Pious XII promulgated part of the Oriental Code, has shown that the institution of a single code for all Orientals is, on the whole, to the advantage of all the Churches.
- 4. The institution of a single code for all the Oriental Churches is not prejudicial to the ecclesial patrimony of the Churches concerned: on the contrary, with a single code this patrimony would find a clearer formulation and a stronger safeguard.

The Decree "Orientalium Ecclesiarum" of the Second Vatican Council, which guarantees both the right and the duty of these Churches to govern themselves according to their own particular discipline, at the same time lays down common and general norms for all the Churches, as did the ancient Oriental synods, and could well be taken as an example for an eventual common, codified legislation.

The diversity of socio-cultural conditions under which the Oriental Churches live does not call for the elaboration of different codes but rather for the timely "aggiornamento" of a single code which would take due account of these conditions.⁵

It is claimed that in accordance with the Guidelines and applying strictly the principle of subsidiarity, the new Code limited itself to the codification of the common law of the Eastern Churches leaving ample space for the *ius particulare* of each Church *sui iuris*, whether with the explicit reference to such a law, or with many omissions of norms which had been in force up to now or were contained in those parts of the Eastern Code which had been finalized but not yet

⁵ Nuntia 3 (1976) 18-19.

promulgated.⁶ Hence it is hoped that the new Eastern Code will not endanger the specific identity and particular characteristics of each Eastern Church, but safeguards and protects them by means of particular law. For this purpose the particular law of each Church *sui iuris* should be coherent and concordant with the sound tradition of that Church, as a blossoming of its spiritual heritage, assimilating appropriate new elements and discarding all things fallen into disuse.

1.2.1. The Concept of Particular Law

In the Eastern Code the expression "Common law" designates besides the laws and lawful customs of the entire Church also the laws and lawful customs common to all Eastern Churches.⁷ "Common law" in the Eastern Code can denote two things: 1) laws and lawful customs of the entire Church; 2) laws and lawful customs common to all Eastern Churches.

1. Laws and lawful customs of the entire Church include mainly the laws promulgated by the supreme authority of the Church for the universal Church, namely juridical norms contained in the Documents of Vatican II, the Code of Canon Law (CIC 1983-the common law of the Latin Church), the Code of Canons of the Eastern Churches (CCEOthe common law of the Eastern Churches) and the apostolic constitution Pastor Bonus (which determines the structure and functioning of the Roman Curia). Moreover the "special laws" for the universal Church like the apostolic constitution

⁶ I. ZUZEK, "Particular Law in the Code of Canons of the Eastern Churches", in J. Chiramel & K. Bharanikulangara eds., The Code of Canons of the Eastern Churches: A Study and Interpretation, Alwaye 1992, 44. Although the Oriental Code contains large sections which have no counterpart in the Latin Code (eg. Titles IV, V, VI, namely cc. 55 - 176) the overall number of canons is 206 less than in the Latin Code. In the Latin Code there are 1752 canons, while the Oriental Code has only 1546 canons.

^{7 &}quot;Nomine iuris communis in hoc Codice veniunt praeter leges et legitimas consuetudines universae Ecclesiae etiam leges et legitimae consuetudines omnibus Ecclesiis orientalibus communes". CCEO c. 1493 § 1.

⁸ JOHN PAUL II, Ap. Const. *Pastor Bonus*, 29 June 1988, AAS 80 (1988) 841-912.

Divinus perfectionis Magister which contains the procedure for the beatification and canonization of the servants of God, the apostolic constitution *Universi Dominici gregis* concerning the election of the Roman Pontiff¹⁰ as well as other documents promulgated by the Roman Pontiff or the dicasteries of the Roman Curia may be considered.

If somebody wishes to understand by "common law" only the laws and lawful customs <u>common</u> to the entire Church, ¹¹ then it can signify solely those laws which are common both to the Latin Church and to the Eastern Catholic Churches. Though both the Codes formally declare in the first canon that all the laws contained in them apply only to the Latin Church (CIC) or to "all and only" Eastern Catholic Churches (CCEO) respectively, numerous laws of these two Codes are *de facto* the same and thus *de facto* common to the *universa Ecclesia*. ¹² To this must be added at least *Pastor Bonus*, as explicitly stated by Pope John Paul II himself in the apostolic constitution "Sacri Canones", by which he promulgated the Eastern Code. ¹³

2. Secondly, the same expression "common law" is used in the Code to signify the laws and lawful customs common to all Catholic Eastern Churches. At present such common laws are contained in the Code of Canons of the Eastern Churches, promulgated by Pope John Paul II in October 1990. For all practical purposes it is enough to remember that in the Oriental Code "common law" signifies laws and lawful customs common to all Catholic Eastern Churches.

⁹ JOHN PAUL II, Ap. Const. Divinus perfectionis Magister, 25 January 1983, AAS 75 (1983) 349-355.

JOHN PAUL II, Ap. Const. Universi Dominici gregis, 22 February 1996, AAS 88 (1996) 305-343.

¹¹ See G. NEDUNGATT, The Spirit of the Eastern Code, Bangalore 1993, 189-191.

¹² Cf. I. ZUZEK, "Particular Law", 50; see the table of corresponding canons CCEO - CIC - CICO, given in the Latin-English edition of Code of Canons of the Eastern Churches, CLSA 1992, 737-756; C. G. FÜRST, Canones Synopse zum Codex Iuris Canonici und Codex Canonum Ecclesiarum Orientalium, Freiburg im Breisgau - Basel - Wien 1992.

¹³ JOHN PAUL II, Ap. Const. "Sacri canones", AAS 82 (1990) 1038-1039.

In the Code, ius particulare designates all laws, lawful customs, statutes and other norms of law which are not common to the entire Church nor to all the Eastern Churches.14 Particular law is described in the Code in a negative way, that is by exclusion. It excludes all that is common to the entire Church and all that is common to all Eastern Catholic Churches. 15 Although particular law by definition can also include laws common to some Catholic Eastern Churches, it is used in the Code precisely to signify the laws of a single Church sui iuris. The particular law of a Church sui iuris can embody the law that is proper to that Church sui iuris; the law that is proper to each of the eparchies of the same Church sui iuris such as eparchial statutes; the law given by the supreme authority either to that Church sui iuris or to an eparchy; the law given to an eparchy by the competent superior authority of the Church sui iuris; and the law proper to any other community that is part of that Church sui iuris like religious institutes, ecclesiastical universities and faculties. Catholic associations, etc.¹⁶

Our concern here is only with the particular law proper to a patriarchal or major archiepiscopal Church that can be enacted by the synod of bishops and promulgated by the patriarch or major archbishop for that proper Church. *Ius particulare* proper to a patriarchal or major archiepiscopal Church (that can be promulgated by the synod of bishops) excludes laws common to all or some of the Eastern Churches, and laws, decrees, statutes, regulations and lawful customs of lower legislative organs like provincial synods, eparchies, institutes of consecrated life as well as other institutions like seminaries, universities, etc.¹⁷ Therefore the particular law of a patriarchal or major archiepiscopal Church embraces only

[&]quot;Nomine vero iuris particularis veniunt omnes leges, legitimae consuetudines, statuta aliaeque iuris normae, quae nec universae Ecclesiae nec omnibus Eclesiis orientalibus communes sunt". Canon 1493 § 2.

¹⁵ Cf. M. BROGI, "Particular Law in the Future Oriental Code of Canon Law", in C. Payngot, ed., Homage to Mar Kariattil, Rome 1987, 92.

¹⁶ Cf. G. NEDUNGATT, The Spirit of the Eastern Code, 204-205.

¹⁷ Cf. G. NEDUNGATT, The Spirit of the Eastern Code, 209.

those laws enacted by the synod of bishops for the entire Church sui iuris.

1.2.2. The Synod as the Only Legislator of the Particular Law Proper to a Church

Concerning particular law. Pope John Paul II in "Sacri Canones" stated: "In this matter attention should well be given to all of the things committed to the particular law of each Church sui iuris, which are not considered necessary for the common good of all the Oriental Churches. Concerning these things, our mind is that those who are endowed with legislative power in each Church sui iuris make provision as quickly as possible through particular norms taking into account the traditions of their own rite as well as the teaching of the Second Vatican Council". 18 The only competent authority in a patriarchal or major archiepiscopal Church that can make laws for the whole patriarchate or major archiepiscopate is the synod of bishops. Therefore, it is the power of the synod of bishops to enact particular laws in those instances indicated by the common Code or in those matters which are omitted or not treated in the Code.

The pope can make laws for the universal Church, but the patriarch cannot do so for the whole patriarchate. Just as other bishops, the patriarch has only episcopal power with regard to *leges ferendi*, that is, he can make laws for his own eparchy. Outside the eparchy he has legislative power only in his capacity as a member or the president of the synod. Therefore, we cannot attribute to the patriarch the faculty to make laws for the whole patriarchate by using phrases like "the patriarch with the synod of bishops". It is the synod of bishops canonically convoked and presided over by the patriarch which makes laws for the whole patriarchal or major archiepiscopal Church. In short the patriarch is not the legislator of the patriarchal Church.

It is remarkable that the synod of bishops itself designates the manner and time of the promulgation of laws and the publication of synodal decisions (c. 111 § 1). The

¹⁸ JOHN PAUL II, Ap. Const. "Sacri canones", AAS 83 (1990) 1038.

competence of the patriarch with regard to the laws for the whole patriarchate consists only in the promulgation of laws and the publication of decisions of the synod of bishops (c. 112), in the manner and at the time determined by the synod of bishops itself. Until the forthcoming synod the patriarch can also authentically interpret the laws of the synod of bishops, having consulted the permanent synod (c. 112 § 2), and issue decrees which determine more precisely the methods to be observed in applying the law within the scope of his competence (c. 82 § 1 n. 1).

1.2.3. Particular Law Proper to a Patriarchal or Major Archiepiscopal Church

Under this title we present only those instances of particular law that are explicitly indicated in the common Code and that can be enacted by the synod of bishops of a patriarchal or major archiepiscopal Church. Since our concern is the legislative power of the synod of bishops we do not treat the *ius particulare or ius speciale* that can be established by the Roman Pontiff (cc. 58 & 159) or by the Apostolic See (cc. 29, 30, 138, 554 § 2, 758 § 3 etc.) for a patriarchal or major archiepiscopal Church. Rather, we indicate laws that can be enacted by the synod but must be approved by the Roman Pontiff or the Apostolic See, because such laws remain laws of the synod, though approved by a higher authority.

One should keep in mind that it is impossible to give an exhaustive list of the particular laws of a Church because the synod of bishops is free to legislate on any matter that is not contrary to common law, taking into consideration the particular circumstances and needs of each place. Similarly the synod of bishops need not legislate on all instances indicated in the Code because some of them are either exceptions to the general rule or deviations from genuine Oriental traditions. Here we present a list of all the instances provided in the common Code in which the synod of bishops can make particular laws. ¹⁹

For the formation of this list the *Index Analyticus* of I. Zuzek, pages 170-174, was highly helpful.

Title IV - The Patriarchal Churches

- 1. Qualifications required in a candidate so as to be considered suitable for the dignity of a patriarch (64)
- 2. Time of the convocation of the synod for the election of the patriarch (65 § 2)
- 3. President of the synod for the election of the patriarch (70)
- 4. Priests and deacons as the secretary and tellers in a patriarchal election (71 § 1)
- 5. Provision to elect the patriarch by an absolute majority $(72 \S 1)$
- 6. Proclamation and enthronement of the patriarch according to the prescriptions of the liturgical books of the Church *sui iuris* (75)
- 7. Extension of patriarchal power outside the territory (78 § 2 particular law approved by the Roman Pontiff)
- 8. Time of the pastoral visit of the eparchies by the patriarch $(83 \S 1)$
- 9. Establishment of feast days on which the patriarch must celebrate the Divine Liturgy for the people of the entire Church (94)
- 10. Ordination of all bishops of a patriarchal Church by the patriarch (86 § 1 n. 2)
- 11. Consent of the eparchial bishop or the major superior in committing a function of conducting affairs with regard to the entire patriarchal Church (89 § 2)
- 12. Restriction of the deliberative votes of the eparchial bishops constituted outside the territory and titular bishops (102 § 2)
- 13. Invitation of non-episcopal hierarchs and experts to the synod (102 \S 3)
- 14. Convocation of the synod at fixed times (106 § 2)
- 15. Prescription of a higher quorum for a canonical synod (107 § 1)
- 16. Establishing norms that determine how many votes and ballotings are required for the validity of synodal decisions (107 § 2)

- 17. Designation of the manner and time of the promulgation of laws and decisions (111 § 1)
- 18. Observance of secrecy regarding the proceedings and acts of the synod (111 \S 2)
- 19. The statutes of the synod of bishops (113)
- 20. Determination of patriarchal financial administrator's term (122 § 2)
- 21. Administrator of a patriarchal Church during vacancy and his obligations (127 & 128 n. 2)
- 22. The time for the convocation of the metropolitan synod (133 n. 2)
- 23. Determination of the rights and obligations of metropolitans and metropolitan synods inside the territory (137)
- 24. The rights and obligations of metropolitans outside the territory (special norms approved by the Apostolic See (138).
- 25. Participation of a greater number of lay persons in the patriarchal assembly (143 n. 6)
- 26 .Invitation of members of other Churches *sui iuris* to the patriarchal assembly (143 § 3)
- 27. Invitation of observers from non Catholic-Churches and ecclesial communities to the patriarchal assembly (143 § 4)
- 28. The statutes of the patriarchal assembly (145)

Title VII - Eparchies and Bishops

- 29. Collection of the information and documents that are necessary to demonstrate the suitability of the candidates for episcopacy (182 § 1)
- 30. Compilation of the list of worthy candidates for episcopacy by an authority (patriarch alone) other than the synod (182 § 3 particular law approved by the Roman Pontiff)
- 31. Designation of two bishops as scrutineers in the case of election of bishops by letter (186 § 1)
- 32. Conferral of dignities upon clerics by the eparchial bishop (194)

- 33. The days on which the eparchial bishop is to celebrate the Divine Liturgy for the people of the eparchy entrusted to him (198)
- 34. Eparchial bishop must be vigilant that liturgical life is ordered according to the prescriptions of his own Church (199 § 1)
- 35. Celebration of the liturgy of hours in cathedrals according to the lawful customs of each Church (199 § 2)
- 36. Determination of the days of special solemnities on which the eparchial bishop must not be absent from the eparchy (204 § 3)
- 37. The manner of submitting the quinquennial report to the patriarch (206 § 1)
- 38. Other provisions for a vacant eparchial see until the appointment of an administrator (220 n. 2)
- 39. The powers of an auxiliary bishop during the vacancy of the eparchial see (224 § 3)
- 40. Determination of a just remuneration for the administrator of an eparchy (230 n. 1)
- 41. Manner of spending emoluments due to the eparchial bishop during vacancy (230 n. 2)
- 42. Regulation of the election of the delegates of the pastoral council to the eparchial assembly (238 § 1 n.7)
- 43. Regulation of the election of deacons to the eparchial assembly (238 § 1 n. 8)
- 44. Regulation of the election of superiors of institutes of consecrated life to the eparchial assembly (238 § 1 n. 9)
- 45. To which authority the eparchial bishop should communicate the text of laws, declarations and decrees which have been issued at the eparchial assembly (242)
- 46. Non-celibate presbyters as the protosyncellus and syncelli $(247 \S 2)$
- 47. Other obligations of the chancellor of eparchial curia (252 § 1)
- 48. Deternmination of the term of office of the eparchial finance officer (262 § 2)

- 49. The manner of erecting an eparchial finance committee (263 § 1)
- 50. Norms for presbyteral council (265)
- 51. Members of the presbyteral council who are to be elected by the priests themselves (266 n. 1)
- 52. Joining the office of protopresbyter in a stable manner to the office of the parish priest of a particular parish (277 § 1)
- 53. Determination of the term of office of the protopresbyter $(277 \ \S \ 2)$
- 54. Determination of the powers and faculties of the protopresbyter (278 § 1)
- 55. Concerning the appointment of a member of an institute of consecrated life as parish priest (284 § 2)
- 56. Nomination of a pastor for an undetermined period of time $(284 \S 3 \text{ n. 4})$
- 57. Permission to entrust a parish to several presbyters and the rights and obligations of the moderator (287 § 2)
- 58. Canonical possession of a parish by a pastor (288)
- 59. Days on which the pastor is obliged to celebrate the Divine Liturgy for the people (294)
- 60. Parish councils dealing with pastoral and economic matters (295)
- 61. Parish registers (296 § 1)
- 62. Preservation of the older parish books (296 § 5)
- 63. Suitable support and housing of retired pastors (297 § 2)
- 64. Rights and obligations of parochial vicars (302 § 1)

Title VIII - Exarchies and Exarchs

65. Privileges and insignia of an exarch who is not an ordained bishop after the expiry of his function (321 § 2)

Title X - Clerics

- 66. Institution of minor clerics (327)
- 67. Projects for promoting vocations (329 § 2)

- 68. Particular programme for the training of clerics (330 § 1& 3)
- 69. Admission to the minor seminary of those who do not seem to be called to the clerical state, but can be formed to fulfill certain ministries or apostolic work (331 § 1)
- 70. The one who should direct the juridic person of a seminary $(335 \S 2)$
- 71. Statutes of a major seminary of an entire Church *sui iuris* (cf. 334 § 1337 § 3)
- 72. Exercises and texts for strengthening pastoral formation of seminarians (353)
- 73. Ascription of clerics to a patriarchal Church itself (357 § 2)
- 74. Ascription as a cleric in an eparchy before diaconal ordination (358)
- 75. Consent of a determined authority for the licit transfer of a cleric to an eparchy of another Church *sui iuris* (365 § 2)
- 76. Times of spiritual retreats for clerics (369 § 2)
- 77. Suitable means for enabling the clerics to shine forth with the splendor of chastity (374)
- 78. Celebration of the liturgy of hours by clerics (377)
- 79. Frequency of the celebration of the Divine Liturgy (378)
- 80. Complete abstention of clerics from all things unbecoming to their state (382)
- 81. The Reservation to the patriarch or another authority the right of deciding the active participation of clerics in political parties or the supervision of labor unions (384 § 2)
- 82. The authority who can permit clerics to exercise business or trade (385 \S 2)
- 83. Duration of the leave of clerics from the eparchy (386 § 1)
- 84. Attire of clerics (387)
- 85. Obligation of clerics to contribute to their pension funds, social security as well as health benefits (390 § 2)
- 86. Right of clerics to annual vacations (392)

Title XI - Lay Persons

87. Ecclesiastical functions forbidden to lay people (408 § 2)

Title XII - Monks and Other Religious as well as Members of Other Institutes of Consecrated Life

- 88. Permanent council in houses (of religious institutes) of less than six members (422 § 2)
- 89. Reservation of the indult of departure and return to secular life to the patriarch (496 § 2)
- 90. Confirmation of the dismissal of a temporarily professed by the patriarch (499)
- 91. Enactment of more detailed norms concerning secular institutes (569)
- 92. Establishment of ascetics (other than those prescribed by common law) who imitate eremitical life (570)
- 93. Norms for societies of apostolic life (572)

Title XII - Associations of the Christian Faithful

94. Private associations (573 § 2)

Title XIV - Evangelization of Nations

- 95. Enacting regulations by which the catechumenate is to be directed (587 § 3)
- 96. Determination of a just remuneration for catechists (591 n. 2)

Title XV - Ecclesiastical Magisterium

- 97. Revocation of the faculty of deacons to preach the word of God (610 \S 3)
- 98. More detailed norms about the use of radio, cinema, television and the like dealing with Catholic doctrine or morals (653)
- 99. Protection of the rights of an author's intellectual efforts $(666 \S 3)$

Title XVI - Divine Worship and Especially the Sacraments

- 100. Norms for the use of a Catholic building or cemetery or church by non-Catholic Christians (670 § 2)
- 101. Norms for communicatio in sacris (671 § 5)
- 102. Enactment of liturgical laws in liturgical celebrations the prescriptions of the liturgical books of each Church are to be diligently observed $(3,75,91\ 2,135,200,209,278\ 1\ n.\ 3,309,403\ 1,462\ 2,473\ 1,674,683,699\ 2-3,701,704,710,714\ 1,742\ 836)$
- 103. Minister of baptism (677 § 1)
- 104. Age required for assuming licitly the role of a sponsor in baptism (685 § 2)
- 105. Administration of baptism in private homes (687 § 2)
- 106. Manner of recording in the baptismal register in the case of an adopted child (689 § 3)
- 107. Reservation of the confection of holy myron to the patriarch (693)
- 108. Time of the reception of the Holy Eucharist by children (697 & 710)
- 109. The role of deacons in the celebration of Divine Liturgy (699 \S 2)
- 110. The manner of the participation of the Christian faithful in the Eucharistic celebration (699 § 3)
- 111. Preparation of the Eucharistic bread, observance of the Eucharistic fast, liturgical vestments, etc. (707 § 1)
- 112. The obligation of Christ's faithful to receive the Divine Eucharist (708)
- 113. Permision for deacons to distribute the Divine Eucharist $(709 \ \S \ 1)$
- 114. Suitable norms according to which other Christian faithful, too, may distribute the Divine Eucharist (709 § 2)
- 115. Preparation for participation in the Divine Eucharist through fast, prayers and other works (713 § 2)
- 116. Preservation of the Divine Eucharist (714 § 1)
- 117. Offerings for the celebration of the Divine Liturgy (715)

- 118. Times of fast and penance (719)
- 119. Proper place for the celebration of the sacrament of penance (736 § 1)
- 120. Blessing of the oil for use in the sacrament of the anointing of the sick (741)
- 121. Faculty of the patriarch to celebrate a sacred ordination in another eparchy without the permission of the eparchial bishop (749)
- 122. Reception of the lower orders (758 § 1 n. 5)
- 123. Observation of interstices for licit ordination (758 § 1 n. 6)
- 124. Admission of married men to sacred orders (758 § 3)
- 125. Prescription of a higher age for the diaconate and the presbyterate (759 § 1)
- 126. Publication of the names of the candidates for promotion to sacred orders in the parish church (771 § 1)
- 127. Spiritual retreat of candidates for promotion to sacred ordination (772)
- 128. Engagement which precedes marriage (782 § 1)
- 129. Norms concerning the examination of the parties and other means for inquiries which are to be carried out before marriage (784)
- 130. Establishing an older age for the licit celebration of marriage (800 § 2)
- 131. The manner in which the declarations or promises are to be made in mixed marriages (815)
- 132. Observance of legitimate customs in the celebration of marriage (836)
- 133. The pastor before whom marriage is to be celebrated (831 § 2)
- 134. Celebration of marriage by proxy (837 § 2)
- 135. The time of the celebration of marriage (838 § 2)
- 136. Determination of other reasons for the separation of spouses (864 § 2)
- 137. Norms concerning sacramentals (867 § 2)
- 138. Record to be made in the register of the dead (879)

- 139. Constitution, transfer or suppression of holydays and days of penance (880 § 2)
- 140. Suppression or transfer to a Sunday of holydays of obligation common to all the Eastern Churches with the approval of the Apostolic See (880 § 3)
- 141. Satisfaction of holydays of obligation by participation in the celebration of divine praises (881 § 1)
- 142. The manner of observing fast or penance (882)
- 143. The manner and order of exposing sacred icons or images (886)

Title XVII - Baptized non-Catholics Coming into Full Communion with the Catholic Church

- 144. The right of the patriarch to receive non-Catholic Christian faithful into the Catholic Church (898 § 2)
- 145. Prohibition of the parish priest to receive individual lay persons into the Catholic Church (898 § 3)

Title XVIII - Ecumenism or Fostering the Unity of Christians

146. Promotion of ecumenical initiatives (904 § 1)

Tilte XIX - Persons and Juridic Acts

147. Designation of guardians for minors (910 § 2)

Title XX - Offices

- 148. Means required for the fulfilment of an office and just remuneration for those who carry out the office $(937 \S 2)$
- 149. Concerning elections (948 § 1)

Title XXII - Recourse against Administrative Acts

- 150. Fixing time limits for deciding a recourse against an administrative act (1002)
- 151. Empowering the higher authority deciding a recourse to amend a decree (1004)
- 152.Constitution of a special group of bishops to decide recourse against the decrees of the patriarch (1006)

Title XXIII - The Temporal Goods of the Church

- 153. Concerning taxes that can be levied on physical persons (1012 \S 2)
- 154. Setting up limits for the amount of taxes and offerings (1013 § 1)
- 155. Special funds in each eparchy for the purpose of providing appropriately for the fitting and fundamentally equal support of clerics (1021 § 1)
- 156. Establishing institutes of insurance, social security and health welfare for the clergy (1021 § 2)
- 157. Manner of establishing a common reserve fund in each eparchy (1021 § 3)
- 158. Proper organization of the administration of ecclesiastical goods (1022 § 2)
- 159. Obligation of administrators to draw up each year a budget of income and expenditure (1028 § 3)
- 160. Manner of rendering an account publicly by administrators of ecclesiastical goods (1031 § 2)
- 161. Concerning the alienation of the temporal goods of the eparchy (1036 § 2 n. 1)
- 162. Determination of the long-term obligations of non-autonomous pious foundations (1047 § 1 n. 2)
- 163. Further conditions for pious foundations (1048 § 2)

Title XXIV - Trials in General

- 164. Reservation of other cases to the ordinary tribunal of the patriarchal Church (1063 § 4 n. 5)
- 165. Norms for the inter-eparchial tribunal established by the synod (1067 §§ 2 & 3)
- 166. Other cases reserved to a collegiate tribunal (1084 § 1 n. 4)
- 167. The opening time of tribunals (1127)
- 168. Persons who are to be present in court, while cases are being heard before a tribunal (1129 § 1)
- 169. Time-limit of prescription for some penal actions (1152 § 1 n. 3)

Title XXV - The Contentious Trial

- 170. Mode of notifying judicial acts (1192 § 1)
- 171. The manner of questioning witnesses (1242)
- 172. Expenses and remuneration to be paid to experts (1261)
- 173. The authority who can execute the sentence (1340 § 1)

Title XXVI - Certain Special Procedures

174. Observance of common law (cc. 1389-1400) in the removal and transfer of pastors, but particular law approved by the Apostolic See can establish other norms (1388)

Title XXVII - Penal Sanctions in the Church

- 175. Adding additional penalties to those established by common law for a certain offence (1405 § 2)
- 176. The authority who can remit penalties imposed in virtue of particular law (1420 § 2)
- 177. Manner of making a public reprimand (1427 § 1)

Title XXIX - Law, Custom and Administrative Acts

- 178. Particular law of a Church sui~iuris also include the legitimate customs proper to that Church (1493 § 2; 1506-1509), not reprobated by the common Code (6). The Code explicitly advocates the observance of lawful customs at least in 18 instances (78 § 1, 137, 199 § 1, 199 § 2, 230 n. 1, 302 § 4, 383 n. 3, 505 § 3, 473 § 1, 538 § 1, 686 § 1, 715 § 2, 836, 881 § 1, 1022 § 2, 1029, 1515, 1519 § 1)
- 179. Another time period for issuing a decree (1518)

1.3. The Promulgation of Laws and the Apostolic See

According to CS the laws made by the patriarch in the synod cannot be promulgated before they have obtained confirmation from the Apostolic See. Canon 350 of CS part one states:

The synod being terminated, the president shall submit all minutes and decrees to the Apostolic See, and they shall not be promulgated before they have

been confirmed by the same; meantime all those who took part in the synod must observe secrecy on the decisions and matters discussed. The fathers of the synod, however shall determine the manner of promulgation of the decrees as well as the time when the promulgated decrees shall take effect.²⁰

According to the canon, after the termination of the synod the president shall submit all the minutes and decrees to Rome, and in the meantime all those who took part in the synod must observe secrecy regarding the decisions and matters discussed. The laws made by the patriarch in the synod, as stated in CS, can be subjected to strict revision and scrutiny in Rome. Afterwards, these laws can be modified by the Roman curia; the synod can be asked to modify them according to the directions given by the Roman authority or confirmation can be denied. If confirmation is denied, such laws cannot be promulgated, though unanimously passed by the bishops of a Church. Thus the project must be abandoned or new laws made.

The new Code made great progress in this regard, in accordance with the declarations of Vatican II regarding the self-government and autonomy of the Oriental Churches. According to the new Code, the laws can be promulgated by the patriarch in the manner and at the time determined by the synod of bishops, without confirmation from Rome (c. 111 § 1). The canon stipulates only that the acts and decisions are to be sent (mittantur) to the Roman Pontiff as soon as possible, for his information. Such communication of acts is to be made also to the patriarchs of other Eastern Churches according to the judgment of the synod (c. 111 § 3). As a sign of communion and unity it is good to inform the heads of other Churches of the synodal activity of a Church sui iuris, through which they can also profit.

²⁰ Absoluta Synodo, praeses acta et decreta omnia ad Sedem Apostolicam transmittat, nec eadem antea promulgentur, quam ab eadem recognita fuerint; interim vero omnes qui in Synodo partem habuerunt, secretum de actis et negotiis pertractatis servare debent; ipsimet autem Synodi Patres designent et modum promulgationis decretorum et tempus quo decreta promulgata obligare incipiant. CS & 350 § 1.

1.4. The Limitations of the Legislative Power of the Synod of Bishops

The provision for the promulgation of laws without confirmation from Rome does not mean that the synod of bishops is always free to make laws and decisions. It goes without saving that no authority on earth can make laws contrary to divine law and natural law. Then, too, canon 985 § 2 explicitly states that a lower legislator cannot validly legislate a law which is contrary to a higher law. Therefore the synod of bishops cannot enact laws contrary to the Code of Canon Law (the common law of the Latin Church), the Code of Canons of the Eastern Churches (the common law of the Eastern Churches) and Pastor Bonus (common to both Latin and Eastern Churches) promulgated by the same supreme authority of the Church and which together form a single "corpus iuris canonici".21 Moreover the synod has to take into account other laws and norms promulgated by the Roman Pontiff or the Apostolic See and especially the magisterium of the Catholic Church concerning the heritage and identity of the Eastern Churches. In short the rules of particular law have force if in accord with the higher law promulgated by the supreme authority; however, they are null if departing from it.22

The scope of the synod of bishops in enacting laws and decisions is limited in comparison with the tradition of the first millennium, because the common law touches every important aspect of ecclesial life. The competence of the synod regarding the legislation consists in the promulgation of particular law, especially in those instances indicated in the common Code which were already subjected to the revision and scrutiny of the Apostolic See, and confirmed and promulgated by the Roman Pontiff. Many instances of particular law indicated in the Code are mere exceptions from the common law which a synod need not legislate. Though a general canon on confir

²¹ Cf. Nuntia 7 (1978) 38; Discourse of Pope John Paul II on the occasion of the presentation of the Eastern Code, L'Osservatore Romano, 27 October 1990, 4-5; Ap. Const. "Sacri canones", AAS 82 (1990) 1038-1039.

²² Cf. Ap. Const. "Sacri canones", AAS 82 (1990) 1034.

mation by Rome is avoided, in many important matters the synodal and patriarchal decisions need the consent or counsel of the Roman Pontiff as defined in each of the canons itself which treat such matters.²³

It is difficult to think that in addition to the common Code promulgated by the pope, the only legislative authority of a patriarchal or major archiepiscopal Church is the synod of bishops. According to canon 1492, laws enacted by the pope or the departments of the Roman Curia affect all the Oriental Churches if the passive subject is indicated. If the passive subject is not expressly indicated, such laws affect the Oriental Churches in so far as they treat matters of faith or morals or declarations of divine law or these Christian faithful are explicitly included in these laws or they grant a favour which contains nothing contrary to the Eastern rites. Hence the pope or the Apostolic See can enact laws for the Oriental Churches whenever it seems useful. Both the pope and the Apostolic See can also establish "particular law" or "special law" for one or more patriarchal or major archiepiscopal Churches.²⁴

Further, the Pontifical Council for the Interpretation of Legislative Texts has universal competence. CCEO canon 1498 § 1 states that laws are authentically interpreted by the legislator and by the one to whom the legislator granted the power to interpret them authentically. According to article 155 of *Pastor Bonus*, the Pontifical Council is competent to publish authentic interpretation of the universal laws of the Church which are confirmed by pontifical authority. As

The Study Group, in revising c. 350 of CS concerning the confirmation of Rome for the synodal decisions, came to the following conclusions:

 Pour les negotia graviora il convient de préciser dans les canons mêmes qui traitent de ces negotia qu'un assensus de la part du Souverain Pontife Romain est nécessaire.
 Pour les autres negotia traités par un Synode, il convient beaucoup d'en informer le Saint-Siège et souvent même les Patriarches d'autres Églises Orientales. Nuntia 7 (1978) 38. For prior consultation or subsequent approval Cf. cc. 56, 57, 58, 148-149, 509 § 1, 544 § 3, 85 § 1, 126 § 2, 126 § 2, 186 § 1, 642 § 1, etc.

^{.24} For examples see cc. 29 § 1; 30; 58; 78 § 2; 159; 182 § 3; 554 §2; 1388; etc.

^{25 &}quot;Consilio competit Ecclesiae legum universalium interpretationem authenticam pontificia auctoritate firmatam proferre, auditis in rebus

stated in *Pastor Bonus*, the legislator granted the faculty to interpret authentically the "universal laws" of the Church to this pontifical council. Some doubted the competence of the council to interpret the Eastern Code because in this Code there is no "universal law", but only "common law". The Secretariat of State in Prot N 278 287/G N made clear that the competency of the Council for the Interpretation of Legislative Texts extends to the entire Church and is not limited to the Latin Church, and hence includes also the interpretation of the Codex Canonum Ecclesiarum Orientalium and of the laws common to all the Eastern Churches.²⁶ Therefore, the synod of bishops cannot authentically interpret the laws of CCEO.27 An authentic interpretation, communicated in the form of law, has the same force as the law itself and must be promulgated (CCEO c. 1498 § 2). Therefore, theoretically the Pontifical Council can promulgate a law for the Oriental Churches by way of authentic interpretation.

Again, according to the request of the interested party, the Pontifical Council determines whether the particular laws and general decrees, issued by legislators under the supreme authority of the Church, are in agreement or not with the universal laws of the Church.²⁸ Therefore, theoretically any

maioris momenti Dicasteriis, ad quae res ratione materiae pertinet". *Pastor Bonus*, Art. 155.

^{26 &}quot;La 'mente' di Sua Santità per la redazione della citata Costituzione Apostolica circa la Curia romana era che la competenza del Consiglio per l'Interpretazione dei Testi Legislativi si estendesse all'intera Chiesa e non fosse limitata a quella latina.

Adempio, pertanto, il venerato incarico di assicurarLe che il testo della Pastor Bonus' va interpretato nel senso che la competenza del Pontificio Consiglio per l'Interpretazione dei Testi Legislativi comprende anche l'interpretazione autentica del 'Codex Canonum Ecclesiarum Orientalium' e delle leggi comuni a tutte le Chiese Orientali". Communicationes 23 (1991) 14-15.

²⁷ It is good that the *ius commune* of Oriental Churches is interpreted by a central organ, or else each synod may interpret it in different ways.

^{28 &}quot;Iis quorum interest postulantibus, decernit utrum leges particulares et generalia decreta, a legislatoribus infra supremam auctoritatem lata, universalibus Ecclesiae legibus consentanea sint necne". Pastor Bonus, Art. 158.

decision or law promulgated by the synod can be submitted by the interested party to the Pontifical Council for the Interpretation of Legislative Texts to examine whether it is contrary to the universal law of the Church. Furthermore as we see below, the disciplinary laws of the synod bind only within the territorial boundaries of the proper Church.

1.5. The Legislative Power of the Synod of Bishops and the Faithful of the Same Church Outside Territory

According to CS, laws can be enacted for the whole patriarchate, or some part thereof, or for a group of persons (c. 243 § 1). If the laws are for the whole patriarchate, when promulgated they oblige in the entire territory of each of the synodal Fathers (c. 350 § 2). The participation of the bishops outside the territory and the application of the synodal decisions in their territory were not foreseen in CS. With regard to the legislative power of the synod outside the territory the new Code stipulates:

Can. 150 § 2. The laws enacted by the synod of bishops of the patriarchal Church and promulgated by the patriarch have force of law everywhere in the world, if they are liturgical laws; if they are disciplinary laws or if other decisions of the synod are in question, they have the force of law within the territorial boundaries of the patriarchal Church.

§ 3. Eparchial bishops constituted outside the territorial boundaries of the patriarchal Church, who desire to do so, may give force to the disciplinary laws and other decisions of the synod in their own eparchies, provided they do not exceed their competence; if however these laws or decisions are approved by the Apostolic See, they have force of law everywhere in the world.

The regulations of the Code concerning the validity of the laws and decisions of the synod outside the territorial boundaries of a patriarchal or major archiepiscopal Church can be summarized as follows:

1. Liturgical laws enacted by the synod and promulgated by the patriarch have force of law everywhere in the

world. Liturgical laws of a patriarchal or major archiepiscopal Church are mainly contained in the liturgical books of that Church. Even the common Code, though it often refers to the prescriptions of liturgical books, does not on the most part legislate on liturgical matters; and therefore, these norms are to be diligently observed (c. 2). Liturgical books (of course including norms for celebration) can be published by the patriarch with the consent of the synod only after a prior review of the Apostolic See (c. 657 § 1). It is self-evident that anybody who celebrates the liturgy of a Church *sui iuris* anywhere in the world should act according to the liturgical norms contained in the liturgical books of that Church, already reviewed and approved by the Apostolic See. This was the case even before the promulgation of the new Code.

- 2. In principle, disciplinary laws and other decisions of the synod have the force of law only within the territorial boundaries of a patriarchal or major archiepiscopal Church. However, non-liturgical laws of the synod can obtain the force of law outside the territory in two ways:
- a) Synodal decisions as eparchial laws: the eparchial bishop exercises legislative power in the eparchy entrusted to him (cc. 190 &191). An eparchial bishop, constituted outside the territory of a patriarchal or major archiepiscopal Church, in his capacity as the legislator of the eparchy can promulgate the disciplinary laws and other decisions of the synod in his own eparchy, if he so desires and only if the matter is within his competence according to the norms of CCEO. However, the eparchial bishops outside the territory have no obligation to attribute legal force to any synodal decision. Though the eparchial bishops constituted outside the territory are not bound by the disciplinary laws and other decisions of the synod, it is highly desirable that they may promulgate these laws in their eparchies, bearing in mind only the common good and the harmonious growth of their Church.
- b) Synodal decisions as papal law: if the disciplinary laws and decisions of the synod are approved by the Apostolic See, they have force of law everywhere in the world. In such a case, the legislation would not longer be synodal law but pontifical law, and its abrogation would be within the

competence of the Apostolic See.²⁹ Any synod of bishops which desires to promulgate a disciplinary law for the entire Church *sui iuris* can submit its legislation to the Apostolic See and obtain its approval.

The ius commune provides the bishops outside the territory with the same synodal rights as the other bishops of the same Church, and they have deliberative vote in all synodal decisions. But the ius commune, which explicitly states that "bishops outside the territorial boundaries of the patriarchal Church have all the synodal rights and obligations of the other bishops of the same Church" (c. 150 § 1), does not oblige these bishops to apply the disciplinary laws and other decisions enacted by them in their own eparchies, and even prohibits them from doing so at least in certain cases (c. 150 § 3). Thus the laws made by the bishops of a Church (except the liturgical ones) are not applicable to all the bishops and faithful of the same Church. In some Churches there are numerous bishops who do their ministry outside the traditional territory. 30 In such cases it is possible for these bishops to make synodal decisions, without any obligation to apply them in their own eparchies.31 Similarly the bishops outside the territory can condition the decisions of the patriarchate. which would be the contrary if they had not participated.

In the initial stages of the revision, the Code Commission was also conscious of this problem. About the

²⁹ J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, 363.

for example, the Ukrainaian Church has one Metropolitan See and three eparchies in the USA; one Metropolitan See and four eparchies in Canada; one eparchy each in Australia, Brazil, Argentina; and apostolic exarchates in Great Britain, Germany, France and Poland. Thus there are altogether 12 eparchies and 4 apostolic exarchates outside the territory. Similarly the Syro-Malabar Church has 9 eparchies outside Kerala which may increase in the near future. Thus at present the Syro-Malabar Church has 13 eparchial bishops (and two titular bishops) inside and 9 eparchial bishops outside the territory; the Maronite Church has 7; the Melkite Church 5; etc. See Annuario Pontificio 1997, 1148-1151.

For ordinary matters the majority of bishops who are obliged to attend the synod is necessary for the quorum and synodal decisions can be made on the basis of absolute majority.

participation of bishops outside the territory in enacting the disciplinary laws and other decisions of the synod which are applicable only inside the patriarchate, Prof. Zuzek exclaims: "Thus one could wonder why the votes of the aggregated bishops (who, in certain Churches, for example in the Ukrainian at the moment, can be far more numerous than the bishops of the native territory) should condition the decisions of the patriarchs to whom they are not subject".³² However the Code Commission failed to sort out a solution to this problem because of its intransigent application of the principle of territoriality in the whole Code.

In this context it is worth mentioning that in one of the initial texts prepared by the Relator, the bishops outside the territory were granted deliberative vote only in liturgical matters because liturgical laws are applicable everywhere in the world, 33 but later the *Coetus* preferred another text which gives equal rights and "obligations" to all the bishops. 34 When the draft of the Code was sent to the Oriental hierarchies for consultation, two organs suggested the following text: Hierarchs constituted outside the territory who judge that the disciplinary laws and other synodal decisions are not applicable for their territory should exhibit their reasons immediately to the synod; if they are not accepted, they can submit the matter to the Apostolic See, to be decided. 35

This text was rejected by the commission for the reason that it limits the power of the eparchial bishops,³⁶ and many

³² Nuntia 6 (1978) 30.

Text B § 2, "Convocari debent iidem Episcopi ad ceteras Synodos episcoporum in iisque suffragio deliberativo gaudent leges liturgicas quod attinet; cetera negotia quod attinet, iidem episcopi vocem nonnisi consultivam habent, nisi Synodos ipsa, lege particulari vel decisione in singulis casibus lata, ipsis vocem deliberativam concedat". Nuntia 6 (1978) 31.

³⁴ Cf. Nuntia 6 (1978) 32-33.

³⁵ Hierarchae extra Patriarchatum constituti, qui leges disciplinares necnon ceteras Synodi decisiones pro suo territorio non applicandas iudicent, rationes suas statim Synodo exhibeant, quibus non acceptis, rem Apostolicae Sedi ad decisionem ferendam submittere possunt. Nuntia 22 (1986) 110-111.

³⁶ It does not seem reasonable to say that the application of synodal decisions limit the power of the eparchial bishops of the same Church

consultors wish to express the matter in a positive manner.37 Later in giving their observations to the draft of 1987, two members of the commission proposed the following canon concerning the validity of synodal decisions outside the territory: Laws made by the synod of bishops and promulgated by the patriarch have the force of law everywhere in the world. An eparchial bishop situated outside the territory, who judges a given law not to be fruitfully applicable in his place, shall reveal his reasons to the synod in order to obtain exception from the law. If they judge that such an exception cannot be obtained, the matter can be referred to the Roman Pontiff.38 The answer given to this suggestion was that "the question is referred to the superior Authority". 39 On 10 November 1988. the decision of the superior authority was communicated to the vice-president of the Pontifical Commission, stating that the jurisdiction of the patriarch remains within the territorial boundaries of his Church. 40 Consequently disciplinary laws and other decisions of the synod are not applicable outside the delimited territory.

In spite of many attempts to find a solution for the problem of the bishops who are situated outside the territory, the canon remained the same in the new Code without any modification. Thus, according to the new Code, the large number of bishops and Christian faithful who live outside the traditional territory of a Church are neither bound by the laws of the synod of bishops of their mother Church, at least

outside the territory, because all the bishops receive their episcopal power in the same manner by the episcopal consecration. Synodal decisions limit the episcopal power in the same manner and in the same degree inside and outside the territory.

³⁷ Nuntia 22 (1986) 110-111.

^{38 &}quot;Lege a Synodo Episcoporum latae et a Patriarcha promulgatae, ubique terrarum vigent; Episcopus tamen eparchiae extra territorium sitae, qui legem latam non esse cum fructu applicabilem in sua ditione existimat, rationes suas Episcopis ad exemptionem a lege obtinendam patefaciat: Si eorum iudicio renuenti se obtemperare non posse iudicat, rem ad Summum Pontificem deferre potest". Nuntia 28 (1989) 43.

³⁹ "Riguarda la questione trasmessa all'Autorità superiore". Nuntia 28 (1989) 43.

⁴⁰ The text of the decision is in Nuntia 29 (1989) 26-27.

in part, nor by the laws of the bishops' conference of the place. So these bishops and Christian faithful do not seem to be integrated either in the mother Church or in the place where they are now located.⁴¹

According to *ius commune*, the deliberative vote of bishops constituted outside the territory can be restricted by particular law, except in the election of patriarchs, bishops and candidates for episcopacy outside the territory. In consideration of the territorial restrictions of patriarchal or synodal authority as stipulated in the Code, it would be logical to restrict the deliberative vote of bishops constituted outside the territory of the Church (except in liturgical matters) since it would not be appropriate for them to caste a deliberative vote on an issue which might not have the force of law for them. Hence in non liturgical matters they could be restricted to a consultative vote.⁴²

However, the restriction of the votes of the bishops set up outside the territory is not a good solution when considering the unity and growth of a Church, as well as the communion and concord of all its bishops congruent with the doctrine of the collegiality of bishops rehabilitated by Vatican II. The iust solution would be to grant legal validity to every synodal decision in all those places where an eparchy or a hierarchy of a Church sui iuris has been established. This agrees perfectly with the teaching of Vatican II on the equality of Churches and the right of the Oriental Churches to govern themselves according to their own proper disciplines (OE 3 & 5). The most fundamental problem here is not whether the synod can restrict the deliberative votes of the bishops outside the territory or not, but the very destiny and future of the Catholic Eastern Churches that have a natural right to grow and extend without endangering and mutilating their own liturgical, theological, spiritual and disciplinary heritage. It is a highly disconcerting fact that even the particular programme for the training of clerics (c. 330), as well as the

⁴¹ Cf. F. MORRISEY, "Episcopal Conferences and Three Munera", The Jurist 48 (1988) 27.

⁴² Cf. J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, 285 & 362.

catechetical directory (c. 621) issued by the synod in harmony with the spiritual heritage and genuine traditions of the Church *sui iuris*, are not applicable in the eparchies and metropolitan provinces of the same Church erected outside its delimited territory.

2. The Synod of Bishops and the Judicial Power

On 6 January 1950, Pope Pious XII promulgated the motu proprio Sollicitudinem Nostram(SN) which contained the law of the Oriental Churches on judicial procedures.⁴³ SN, which entered into vigour on 6 January 1951 with its 576 canons, was "an excellent Code, well adapted to the present conditions of the Oriental Churches".⁴⁴ In fact, it remained the law of these Churches until the new Code, promulgated by Pope John Paul II in 1990, obtained legal force on 1 October 1991. Therefore, we outline briefly the judicial power of the synod in SN, the main modifications made during the revision and updating of the Eastern law and finally the judicial power of the synod of bishops according to the new Code.

2.1. Judicial Power of the Synod of Bishops According to SN

2.1.1. Patriarch as the Judge of the Entire Patriarchal Church

In SN, the judge of the whole patriarchal Church appears to be the patriarch, who judges by himself or with the permanent synod and other tribunals in accordance with canons 17-18. This is also clear from the fact that appeals are reserved to the patriarch from several lower tribunals.⁴⁵ According to canon 17, the patriarch with the permanent synod is competent to judge minor criminal cases of bishops within the territory of the patriarchate,⁴⁶ but appeals from

⁴³ AAS (1950) 5-120.

⁴⁴ Nuntia 3 (1976) 23.

⁴⁵ Cf. SN c. 72 § 1, n. 2, 3, 5; § 2, n. 1. For a detailed analysis of the judicial power of the patriarch according to SN, see E. EID, La figure juridique du patriarche, 102-116.

⁴⁶ Patriarchae cum Synodo permanenti competit iudicare Episcoporum sibi subiectorum, qui domicilium vel quasi-domicilium in patriarchatu

sentences must be made to the Apostolic See.⁴⁷ In major criminal cases the patriarch with the permanent synod can begin the process, but he should inform the Roman Pontiff to be judged by him.⁴⁸ According to canon 18, the patriarch with the permanent synod is to judge major contentious cases of bishops, financial matters involving a great sum of money, contentious cases of eparchies, cases about the rights and temporal goods of bishops, as well as eparchial curia.⁴⁹ In these cases appeals must be made to the Apostolic See according to canon 74. The patriarch alone (without the permanent synod) is competent to judge minor criminal cases of bishops including titular ones, except those cases reserved to a collegiate tribunal in canon 46 § 1 n. 1.⁵⁰

2.1.2. The Competence of the Ordinary Tribunal of the Patriarchal Church

The ordinary tribunal is for the whole patriarchal Church and is distinct from the tribunal of the patriarchal eparchy. This tribunal has its own judges, promoter of justice, defender of bond, as well as auditors, notaries and other necessary ministers. ⁵¹ It is competent to judge local hierarchs, except syncellus, patriarchal syncelli and delegates who are

habent, causas criminales minores, quae nempe poenam privationis officii aut depositionis minoris seu depositionis simplicis vel maioris seu degradationis non secumferant. SN c. 17 § 1, n. 1.

 $^{^{47}}$ Appellatio a sententiis de quibus in can. 17, § 1, n. 1, et § 2, et in can. 18 §§ 1, 3, fieri debet ad Sedem Apostolicam. SN c. 74.

⁴⁸ In causis vero maioribus, Patriarcha cum Synodo permanenti processum instruere debet Romano Pontifici, ferendae sententiae causa, transmittendum. Patriarcha, insuper, ad scandalum vitandum, remedia opportuna interim adhibere potest. SN c. 17 § 1, n. 2.

Patriarchae cum Synodo permanenti est iudicare: 1. Causas contentiosas Episcoporum, etiam titularium, gravioris momenti, et, si agatur de re pecuniaria, illas in quibus agitur de summa vel re cuius pretium excedat triginta milia francorum aureorum; 2. Eparchiarum contentiosas causas; 3. Causas de iuribus aut bonis temporalibus Episcopi aut mensae seu domus vel curiae eparchialis. SN c. 18 § 1.

⁵⁰ Patriarchae competit iudicare ceteras contentiosas causas Episcoporum, etiam titularium, firmo can. 46, § 1, n. 1. SN c. 18 § 3.

⁵¹ SN c. 85; CS c. 298.

not bishops; physical and juridical persons who are immediately subject to the patriarch; religious of an exempt religious institute of pontifical right; contentious or criminal cases of superiors of a religious institute of pontifical right who do not have a superior in the same religious institute endowed with judicial power; and other cases reserved to the patriarchal tribunal by the prescription of law.⁵² In regard to the tribunal of the patriarch judging in the first instance or in the second instance, appeal can be had to the Apostolic See of to other judges nominated by the patriarch; however, when the patriarch acts as judge in person, appeal must be made to the Apostolic See.⁵³

2.1.3. The Limitations of the Judicial Power of the Patriarchal Church

In SN, the judicial power of a patriarchal Church is considerably limited by the competence of the Roman Pontiff and the tribunals of the Apostolic See. We have already seen that a patriarch by himself or with the permanent synod is competent to judge all contentious cases and minor criminal cases in accordance with canons 17-18, but appeals are reserved to the Apostolic See. Thus in such cases a patriarch cannot make the final definitive sentence. The competence of the Apostolic See is defined mainly in canons 15, 16 and 32 of SN. According to canon 15, the Roman Pontiff has the exclusive right to judge the cases of those who hold the highest

Tribunali ordinario sedis patriarchalis de quo in can. 85 competit iudicare: 1. Hierarchas locorum, Syncellis exceptis, Patriarchae Syncellos atque delegatos qui non sint Episcopi; 2. Personas physicas vel morales Patriarchae immediate subiectas, firmo praescripto can. 51, § 1; 3. Religiones iuris pontificii exemptione pontificia fruentes, firmo praescripto can. 51, § 1; 4. Causas contentiosas vel criminales Superioris in religione iuris pontificii exemptione pontificia fruente, qui in eadem religione Superiorem iudiciali potestate praeditum non habeat; 5. Causas ex iuris praescripto tribunali patriarchali reservatas. SN canon 19.

⁵³ A tribunali Patriarchae vel Archiepiscopi iudicante in prima vel secunda instantia appellatio fieri potest ad Sedem Apostolicam vel ad alios iudices a Patriarcha vel Archiepiscopo nominatos, firmo praescripto § 2. Quoties ipse Patriarcha vel Archiepiscopus partes iudicis per se egit, appellatio interponi debet ad Sedem Apostolicam. SN c. 73 § 1.

governmental rank in a nation and his close relatives; cardinals and patriarchs; legates of the Apostolic See and in major criminal cases bishops including titular ones.⁵⁴ Canon 16 reserves to the tribunals of the Apostolic See the judgment of resident bishops in contentious cases and other hierarchs either in contentious or criminal cases who are constituted outside the territorial boundaries of a patriarchal or major archiepiscopal Church, and ecclesiastical persons either physical or juridical who have no superior below the Roman Pontiff.⁵⁵

The Roman Pontiff also has the right to cite any case to his tribunal to be judged by one whom he himself shall have appointed.⁵⁶ In addition, in view of the primacy of the Roman Pontiff, any member of the faithful in the whole world may appeal his case to the Apostolic See, whether the case be civil or criminal at any stage whatever of the procedure, or may take it there in the first instance.⁵⁷ In summary, according to SN, the competence of the Roman Pontiff and the tribunals of the Apostolic See are much higher by way of reservation of cases and by way of appeal in many cases for the trial in second and third instances (cc. 73-74).

⁵⁴ Ipsius Romani Pontificis dumtaxat ius est iudicandi: 1. Eos qui supremum actu tenent populorum principatum horumque coniuges, filios ac filias eosve quibus ius est proxime succedendi in principatum; 2. S. R. E. Cardinales et Patriarchas; 3. Legatos Sedis Apostolicae, et in criminalibus Episcopos, etiam titulares, firmo praescripto can. 17. SN c. 15.

⁵⁵ Firmo praescripto c. 15, coram tribunalibus Sedis Apostolicae conveniri debent; 1. Episcopi residentiales in contentiosis, et, Syncellis exceptis, ceteri locorum Hierarchae sive in contentiosis sive in criminalibus, dummodo Patriarchae vel Archiepiscopo non subiiciantur aut, si subiiciantur, domicilium vel quasi-domicilium extra patriarchatus vel archiepiscopatus habeant; 2. Personae ecclesiasticae, sive physicae sive morales, quae Superiorem infra Romanum Pontificem non habent. SN c. 16 § 1.

Alias causas quas Romanus Pontifex ad suum advocaverit iudicium, videt iudex quem ipse Romanus Pontifex designaverit. SN c. 16 § 2.

Ob primatum Romani Pontificis integrum est cuilibet fideli in toto orbe catholico causam sive contentiosam sive criminalem, in quovis iudicii gradu et in quovis litis statu, cognoscendam ad Sedem Apostolicam deferre vel apud introducere. SN c. 32.

2.2. The Judicial Power of the Synod of Bishops and the Revision of SN

The motu proprio SN was revised and updated by the Pontifical Commission for the Revision of the Oriental Code and inserted into the new Code as Titles XXIV-XXVII. The first Plenary Assembly of the Commission of 18-23 March 1974, which approved the Guidelines for Revision of the Code of Oriental Canon Law, established some fundamental principles for the revision of the canons De processibus. Since the whole process of revision was conducted on the basis of these principles, it is important to cite them here:

- 1. In "de iudicis" one thing only is important, notably: That the administration of justice be perfectly proportioned to the real state of things, to the conditions of the individuals involved and of the ecclesiastical society. In this respect, the Motu Proprio "Sollicitudinem Nostram" already constitutes an excellent Code, well-adapted to the present conditions of the Oriental Catholic Churches. However, the canons relative to procedure should be improved by the introduction of some changes intended to reflect the particular structure of these Churches, as well as by the simplification of the canonical procedures themselves.
- 2. It is desired that all Catholics observe the same procedural norms.
- 3. Every Oriental Church should be empowered to organize its own tribunals so that it will be in a position to deal with cases (not reserved to the Holy See) in all three instances up to the final sentence, without prejudice to the right of provocatio ad Sedem Apostolicam in accordance with can. 32 of the MP Sollicitudinem Nostram which represents an exceptional case and does not constitute a real appeal.
- 4. The patriarchal synod (dealt with in can. 340 par. 1 of MP "Cleri Sanctitati") should again become a tribunal for major criminal actions ("Sollicitudinem Nostram", can. 17, par. 1, n. 2) without prejudice to the above-mentioned can. 32 and the appeal to the Roman Pontiff after sentence has been pronounced in the first instance of the patriarchal synod.

5. There must be a formal declaration to the effect that in Canon Law the principle of legal protection is to be applied in an impartial fashion to superiors and subjects alike, so that all suspicion of arbitrariness in the ecclesiastical administration may be removed.

This end can be achieved only if a system of appeals is wisely established by law, whereby anyone who has reason to believe his rights have been violated in the lower instance, is able to obtain redress in the higher. From this derives the necessity of ordering administrative tribunal according to grade and kind, so that the defence of rights may be provided with own canonical procedure to be duly followed by the authorities of the different grades of competence.⁵⁸

On the basis of these principles together with other guidelines, the whole revision was carried out by the *Coetus de Processibus* composed of 13 consultors. Canons 15, 16, and 17 which involved much work of the *Coetus de Processibus* and *Coetus Centralis* are the most important canons of SN affecting the competence of the synod of bishops.

2.2.1. The Competence of the Synod of Bishops to Judge Bishops

The Coetus de Processibus did not have great difficulty in formulating canon 15 numbers 1 and 3 of SN, because all consultors agreed to eliminate the detailed enumeration of those who have the privilege of being judged personally by the Roman Pontiff. It seemed sufficient for the Oriental Code to state in the first paragraph: "The Roman Pontiff has the exclusive right to judge persons whose cases are reserved to him", 59 and in the third paragraph to stipulate that bishops who do not have a superior below the Roman Pontiff are to be judged by the tribunal designated by the Roman

⁵⁸ Nuntia 3 (1976) 23; Nuntia 5 (1977) 4-5.

⁵⁹ "Ipsius Romani Pontificis dumtaxat ius est iudicandi personas quarum causas sibi reservat". Nuntia 5 (1977) 10.

Pontiff.⁶⁰ Thus the *Coetus* formulated this canon in accordance with the directive principle which required that the patriarchal synod should become a tribunal for the major criminal cases of bishops named in canon 17 § 1 number 2 of SN. According to the Relator of the *Coetus de Processibus*, it is suitable that the bishops who have the patriarch as superior are not included among the persons to be judged solely by Roman Pontiff (as stated in SN c. 15 n. 3) or by the tribunals of the Apostolic See (SN c. 16).⁶¹ Therefore, the *Coetus* without difficulty agreed that the synod of bishops is competent to judge all contentious and criminal cases of the bishops inside the territorial boundaries of a patriarchal or major archiepiscopal Church.

2.2.2. The Competence of the Synod of Bishops to Judge the Patriarch or Major Archbishop

According to SN canon 15 number 2, all cases concerning the patriarch are reserved to the Roman Pontiff. On the other hand, patriarchs in the Orient were deposed by the synod of bishops of their own Church; while in some Churches, for example, in the Byzantine Church, there existed procedures according to which the consent of other patriarchs was necessary for the deposition of a patriarch. Therefore it is evident that according to Oriental tradition, patriarchs were adjudicated by the synod of bishops.

Within the Coetus there were two opinions concerning this question. One group of consultors argued for the

^{60 &}quot;Episcopi qui superiorem infra Romanum Pontificem non habent iudicantur a tribunali ab ipso Romano Pontifice designato". Nuntia 5 (1977) 10.

^{61 &}quot;Il s'en suit que les Évêques qui ont un Patriarche comme supérieur, ne peuvent plus être inclus parmi le personnes qui doivent être jugées seulement par le Souverain Pontife (SN c. 15, n. 3) ou par les tribunaux du Siège Apostolique (c. 16)". Nuntia 5 (1977) 10.

^{62 &}quot;D'autre part, il faut reconnaître que même les Patriarches en Orient furent souvent déposés par le Synode des Évêques de leur propre Église, même si dans certaines Églises, comme par exemple dans le monde byzantin, il y avait les procédures qui exigeaient que pour la déposition d'un Patriarche il faut aussi le consentement des Patriarches des autres Églises". Nuntia 5 (1977) 10.

courageous re-affirmation of the tradition. Others wished to retain *ius vigens*, which reserved the cases of patriarchs or major archbishops to the Roman Pontiff. This group gave the following reasons:

- 1. It does not seem appropriate that the *Pater et Caput* of a Church could be judged by his brothers in the episcopate.
 - 2. It could create fractions and divisions in the Church.
 - 3. It would be a clear diminution of patriarchal power.
- 4. The regulation of *Sollicitudinem Nostram* did not create difficulties in this point. It was well accepted by the bishops and the faithful of all Churches, and it conforms to the profound respect offered to a patriarch.⁶³

Those consultors who wanted to confer a greater authority upon the synod added the following reasons:

- 1. The synodal principle of the patriarchal Churches must be put in relief in the Oriental Code.
- 2. It conforms to the ancient tradition which should be re-established as required by the Second Vatican Council (OE 6), by the inaugural discourse of the Holy Father and by the directive principles of the Plenary Assembly of the Commission.
- 3. Part one sufficiently affirms the right of the Roman Pontiff who can always reserve to himself the cases concerning the patriarch.⁶⁴
- 4. In the text of the canon itself, an embarrassing situation could be avoided for the patriarch, by stating that the synod can judge him only if the patriarch himself or the synod does not make recourse to the Holy Father.⁶⁵

On the basis of these assertions, two texts were formed which could reflect both positions held by the consultors:

a) "The Roman Pontiff has the exclusive right to judge patriarchs, major archbishops, etc...".

⁶³ Nuntia 5 (1977) 11.

⁶⁴ Part 1 referred to here is the revised version of SN c. 15 § 1, which is as follows: "ipsius Romani Pontificis dumtaxat ius est iudicanti personas quarum causas sibi reservat". Nuntia 5 (1977) 10.

⁶⁵ Nuntia 5 (1977) 11.

b) The synod of bishops judges all cases of patriarchs or major archbishops, unless the patriarch or major archbishop himself or the synod itself defers the matter to the Roman Pontiff.66

2.2.3. Final Decision on the Competence of the Synod of Bishops to Judge Patriarchs or Major Archbishops and Bishops

After a long discussion, the Coetus with seven placet against three non-placet accepted the second text which affirms the synodal principle. But the Coetus Centralis in the session 7-12 February 1977, which examined all the texts prepared by different groups, found this text unacceptable and imposed on the Coetus de processibus a novum examen by a formal motion. The Coetus then voted again with the same result. The Coetus Centralis again rejected the text and demanded the Coetus de Processibus to make a new revision. 67

Convinced that the expected result was not possible from the *Coetus de processibus*, the question was later entrusted to another special Study Group in January 1982, which "after having received a directive from a higher authority", reserved at the end all cases of patriarchs and all penal cases of bishops of the whole Christian Orient to the Roman Pontiff.⁶⁸ I. Zuzek, the secretary of the Pontifical Commission, pointed out in one of his articles that although this was one

⁶⁶ Text A. "Ipsius Romani Pontificis dumtaxat ius est iudicandi Patriarchas, Archiepiscopos maiores, etc.".

Text B. "Omnes causae quae respiciunt Patriarcham vel Archiepiscopum maiorem videt Synodus Episcoporum, nisi ipse Patriarcha, Archiepiscopus maior, vel Synodus rem ad Romanum Pontificem deferant". Nuntia 5 (1977) 11.

⁶⁷ Nuntia 5 (1977) 11-12.

^{68 &}quot;Hac in provincia animadvertendum est, ad causas Patriarcharum atque in criminalibus etiam ceterorum Episcoporum quod attinet (cf. Nuntia 3 pag. 9 n. 3; Nuntia 5 pag. 10-14), tandem, a Superiore Auctoritate indicatione habita, canones 6 et 8, in Coetu a Studiis Speciali mense Januario volventis anni habito, ita denuo recognitos esse, ut omnes hae causae Romano Pontifici reservatae maneant". Nuntia 14 (1982) 4.

of the more notable changes in the updating of "Sacred Canons", it was very acceptable to all the Oriental bishops. ⁶⁹

In accordance with this decision, in the Oriental Code, all cases involving the patriarch and all penal cases of bishops are reserved to the Roman Pontiff. This is a regression from SN which stipulated that the patriarch with the permanent synod can judge minor criminal cases of bishops and begin the process of major criminal cases (SN c. 17). At least the reservation of penal cases of bishops even in the first instance seems to be against the genuine Oriental tradition, against the position of *Orientalium Ecclesiarum* (OE 6), and even against the Guidelines established by the Pontifical Commission for the Revision of the Oriental Code which explicitly state that the patriarchal synod should become a tribunal for major criminal cases.⁷⁰

2.2.4. The Synod of Bishops as the Judicial Authority of a Church

According to canons 17, 18 and 73 of SN, the patriarch with the permanent synod is the supreme judge within the patriarchate and appeals are to be made to the Apostolic See. After much discussion and study the *Coetus* concluded that the patriarch is not by *iure divino* the judge of the whole patriarchate, and he has no judicial power all alone or with the permanent synod, as he had according to the canons 17-18 of SN. The permanent synod is a body which assists the patriarch in the exercise of administrative power. Therefore the *Coetus* came to the conclusion that the judicial powers of the patriarch and the permanent synod should be transferred to the synod of bishops itself and thus it would become, according to the *Coetus*, the supreme tribunal of an Oriental Church, of course subject to the Supreme Pontiff.⁷¹

⁶⁹ I. ZUZEK, "The Patriarchal Structure", 49.

⁷⁰ Nuntia 3 (1976) 23, n. 4.

^{71 &}quot;A fortiori il est souhaitable que le Patriarche qui n'est pas iure divino juge pour tout le patriarcat, n'ait pas le pouvoir judiciaire, comme il l'a selon les canons 17-18 du SN, ou tout seul ou avec son Synode permanent. En ce qui regarde le Synode permanent, il faut noter que ce Synode est un Corps qui aide le patriarche dans le pouvoir

In the revision of these canons, the Coetus has also taken into consideration the directive given by the Guidelines that every Oriental Church should be empowered to deal with cases in all three instances up to the final sentence without prejudice to the competence of the Roman Pontiff. On the basis of these basic orientations, the Coetus has revised canons 17, 18 and 73 of SN and inserted them into the new Code.

2.3. The Judicial Power of the Synod of Bishops according to the new Oriental Code

CCEO canon 110, which delineates the major powers of the synod of bishops of a patriarchal or major archiepiscopal Church, in part 2 states that this synod "is the tribunal in the patriarchal Church according to the norm of can. 1062". Therefore, we analyze canon 1062 and other important canons which deal with the judicial power of the synod. An accurate examination of the canons evidences that there are three major tribunals which are competent to judge cases in different instances within the patriarchal Church.

2.3.1. The Synod of Bishops as the Supreme Tribunal of a Church

According to canon 1062, "the synod of bishops of the patriarchal Church, with due regard for the competence of the Apostolic See, constitutes the superior tribunal within the territorial boundaries of the patriarchal Church". The competence of the Apostolic See in a patriarchal or major archiepiscopal Church is determined in the Oriental Code to a certain extent. The Roman Pontiff alone has the right to judge patriarchs, bishops in penal cases, and those who hold

administratif. Au moins, cela est l'avis actuel dans le *Coetus de Processibus*. Pourtant les pouvoirs judiciaires du Patriarche et de son Synode permanent étaient transférés au Synode des Évêques lui-même et ainsi celui-ci deviendrait, selon le *Coetus*, le tribunal suprême d'une Église Orientale soumis, évidemment, à l'autorité du Souverain Pontife". *Nuntia* 5 (1977) 13; See also *Nuntia* 14 (1982) 5-6.

Normal Synodus Episcoporum Ecclesiae patriarchalis est tribunal ad normam c. 1062. CCEO c. 110 § 2.

the highest civil office in a state (c. 1060 § 1). He has also the right to call any case to his judgment (c. 1060 § 1 n. 4). The bishops of a Church who reside outside the territory are not considered members of the same Church, and they are to be judged in contentious cases by the tribunal designated by the Roman Pontiff. Therefore, the synod of bishops of a patriarchal Church has no judicial power over these bishops. though they have equal synodal rights and obligations, unless the Roman Pontiff has designated the synod as the tribunal for them. In virtue of the primacy of the Roman Pontiff. anyone of the Christian faithful is free to bring a case at any stage and in any grade of judgment before the Roman Pontiff. since he is the supreme judge for the entire Catholic Church. He acts either personally or through the tribunals of the Apostolic See or through judges designated by him.74 Furthermore, the Supreme Tribunal of Apostolic Signatura has judicial competence over the universal Church. According to Zuzek there was some difficulty in deciding the competence of the tribunals of the Apostolic See. This was resolved by the clause "with due regard for the competence of the Apostolic See" introduced in canon 1062 § 1, having in mind above all the competence of the Apostolic Signatura which ensures that justice may be administered correctly in the universal Church according to article 121 of the Apostolic Constitution Pastor Bonus. 75 Within these limitations the synod of bishops is the superior tribunal of a patriarchal or major archiepiscopal Church.

⁷³ Exceptis Episcopis intra fines territorii Ecclesiae patriarchalis potestatem suam exercentibus ceteri Episcopi in causis contentiosis iudicantur a tribunali a Romano Pontifice designato salvo can. 1066 § 2. CCEO c. 1060 § 2.

⁷⁴ Ob primatum Romani Pontificis integrum est cuilibet christifideli causam suam in quovis statu et gradu iudicii cognoscendam ad ipsum Romanum Pontificem deferre, qui pro toto orbe catholico iudex est supremus et qui vel ipse per se ius dicit vel per tribunalia Sedis Apostlicae vel per iudices a se delegatos. CCEO c. 1059 § 1.

⁷⁵ Cf. I. ZUZEK, "The Patriarchal Structure", 48. "Hoc Dicasterium, praeter munus, quod exercet, Supremi Tribunalis, consulit ut iustitia in Ecclesia recte administretur". Pastor Bonus, Art. 121.

2.3.2. The Synodal Tribunal of Three Bishops

The synod of bishops, the supreme tribunal of a patriarchal or major archiepiscopal Church within its territorial boundaries, normally exercises its judicial power through a synodal tribunal of three bishops which represents the synod. The synod itself practically remains an appeals tribunal. According to canon 1062 § 2, "the synod of bishops of the Patriarchal Church must elect from among its members by secret ballot a general moderator for the administration of justice as well as two bishops who along with him as president will make up a tribunal and hold office for a five-year term". Thus the synodal tribunal is constituted by "a general moderator for the administration of justice" and two other bishops elected by the synod of bishops. If one of these three bishops is a party in the case or is unable to be present, the patriarch with the consent of the permanent synod is to substitute another bishop (c. 1062 § 2). Since the canon makes no distinction between the bishops of the same Church constituted inside or outside the territorial boundaries of the same Church, bishops from outside the territory can be also elected "general moderator for the administration of justice" or members of the synodal tribunal.

The synodal tribunal of three bishops is competent to try the contentious cases whether of eparchies or of bishops, even titular bishops (c. 1062 § 3).76 Appeal in these cases is to be made to the "full" synod of bishops without any further recourse, but without prejudice to the right of any one of the Christian faithful to bring his case at any stage and in any grade of judgment before the Roman Pontiff.77 The general moderator for the administration of justice has the right of vigilance over all tribunals within the territorial boundaries

⁷⁶ In the Latin Church only the Roman Rota is competent to judge bishops in contentious cases. See CIC canon 1405 § 1 n. 1.

⁷⁷ Appellatio in his causis fit ad Synodum Episcoporum Ecclesiae patriarchalis ulteriore appellatione remota salvo can. 1059. CCEO c. 1062 § 4. Because of canon 1059 and especially the phrase "salvo canon 1059" added here, it is difficult to believe that the sentence of the synod of bishops would become the final judgment. It is almost certain that the bishop who receives a negative sentence would appeal to the Roman Pontiff.

of the patriarchal or major archiepiscopal Church. He has also the right of decision if objection is raised against some judge of the ordinary tribunal of the patriarchal Church (c. 1062 § 5).

2.3.3. The Ordinary Tribunal of the Patriarchal or Major Archiepiscopal Church

The patriarchal or major archiepiscopal ordinary tribunal which is distinct from the tribunal of the eparchy of the patriarch or major archbishop, is constituted for the whole territory of a patriarchal or major archiepiscopal Church (c. 1063 § 1). This tribunal is to have its own president, judges. promoter of justice, defenders of the bond as well as other necessary officials appointed by the patriarch with the consent of the permanent synod (c. 1063 § 2). It is the appellate tribunal in second and subsequent instances, with judges serving in rotation, for cases already judged by lower tribunals. This tribunal has also the rights of a metropolitan tribunal in those areas of the patriarchal Church where provinces have not been established (c. 1063 § 3). The ordinary tribunal is competent to judge in the first and subsequent instances, with judges serving in rotation the cases of exarchs and patriarchal delegates who are not bishops; physical or juridical persons immediately subject to the patriarch: institutes of consecrated life of pontifical right; superiors of institutes of consecrated life of pontifical right, who do not have in the same institute a superior endowed with judicial power; and cases reserved to this tribunal by particular law (c. 1063 § 4).

2.4. Other Tribunals within a Patriarchal or Major Archiepiscopal Church

2.4.1. The Eparchial Tribunal

The eparchial bishop is the judge of first instance in each eparchy and for all cases not expressly excepted by law (c. 1066 § 1). Cases excepted by law include: a) cases reserved to the Roman Pontiff (c. 1060), to the synod of bishops (c. 1061 § 3) as well as to the ordinary tribunal of a patriarchal or major archiepiscopal Church (c. 1063 § 4); b) cases of religious

due to the competence of their own tribunal (c. 1069 § 1); and c) cases excepted because of the competence of inter-eparchial or inter-Church tribunal constituted in accordance with canons 1067 and 1068. Canon 1066 explicitly states another exception to the rule that the bishop be the adjudicator: if the case concerns the rights or temporal goods of a juridical person represented by the bishop like the eparchy, eparchial curia, the eparchial seminary, etc., the appellate tribunal, which will normally be that of the metropolitan, is to determine the issue.

The eparchial bishop exercises his judicial power personally or through others, especially through his tribunal. The eparchial tribunal consists of a judicial vicar (c. 1086), judges (c. 1087), auditors (c. 1093), promoter of justice (c. 1094), defender of the bond (c. 1096) and notaries (c. 1101). Normally appeals from an eparchial tribunal are to be made to the metropolitan tribunal (c. 1064 § 1).

A collegiate tribunal of three judges is to be established for the judgment of cases reserved to such a tribunal by common law (c. 1084 § 1). If a collegiate tribunal cannot be established for a trial of first instance, the patriarch, having consulted the permanent synod, can permit the eparchial bishop to entrust cases to a single clerical judge as long as the impossibility lasts (c. 1084 § 3).

2.4.2. The Metropolitan Tribunal

The metropolitan tribunal is not distinct from the tribunal of the eparchy of the metropolitan (c. 1064 § 1). Canon 1064 § 1 states: "The metropolitan tribunal which is not distinct from the tribunal of the eparchy of the metropolitan see is the appellate tribunal for sentences of the eparchial tribunals". Thus the metropolitan tribunal at the same time acts as the eparchial tribunal of the metropolitan see and the appellate tribunal for the sentences of eparchial tribunals. The appellate tribunal of the metropolitan tribunal is the ordinary tribunal of the patriarchal or major archiepiscopal Church (c. 1064 § 2).78

⁷⁸ For example, at present the Syro-Malabar Church has four metropolitan sees: Changanacherry, Ernakulam, Tellicherry and Trichur. The four metropolitan tribunals are competent to receive appeals from their

2.4.3. The Tribunal for Religious

Canon 1069, which determines the tribunal of first instance for religious, regulates:

Controversies between physical or juridic persons of the same institute of consecrated life, except secular institutes, in which superiors possess the power of governance, are to be heard before the judge or the tribunal determined in the typicon or the statutes of the institute.

According to this canon, religious institutes and their superiors possess judicial power if the typicon or constitution so states, under the following conditions:

- a) Only those institutes have judicial power in which superiors possess the power of governance. Canon 979 § 1 establishes that "those who have been constituted in sacred orders are, in accordance with the norm of law, capable of the power of governance, which exists in the Church by divine institution". Regarding the power of governance of religious, canon 511 § 2 specifies that in clerical orders and congregations of pontifical or patriarchal right, superiors and synaxes possess power of governance for both the external as well as the internal forum, in conformity with the statutes. Therefore, only superiors and synaxes of clerical religious institutes of pontifical or patriarchal right possess judicial power. Excluded are all eparchial religious institutes (even if clerical), all non clerical religious institutes, and thus all female institutes even if they are of patriarchal or pontifical right.
- b) The religious tribunal is competent to judge <u>only</u> <u>controversies between physical or juridical persons of the same institute of consecrated life</u>. This clause further excludes controversies between physical or juridical persons of different religious institutes, a religious person of whatever kind and a secular cleric, a religious person and a lay person, a religious person and a non-religious juridical person, etc.
- c) Canon 1063 § 4 reserves the cases of institutes of consecrated life of pontifical right and superiors of institutes

suffragans. The appeals for cases judged in first instance by the tribunals of Changanacherry, Ernakulam, Tellicherry and Trichur are to be made to the Ordinary tribunal of the Syro-Malabar Church.

of consecrated life of pontifical right, who do not have in the same institute a superior endowed with judicial power, to the ordinary tribunal of the patriarchal Church.

d) In all other cases the judicial procedures of religious take the normal course and the diocesan tribunal judges at the first instance, if the particular law does not stipulate otherwise.

2.4.4. The Tribunal of Several Eparchies of the Same Church Sui Iuris

Canon 1067 provides for the establishment of intereparchial or regional tribunals in order to cater for the particular circumstances and needs of each place. The procedure for establishing an inter-eparchial tribunal inside and outside the territory of a Church is not the same. Depending on the authority involved, one can distinguish three kinds of procedures:

- a) Inter-eparchial tribunal erected by the patriarch or major archbishop: with the consent of the eparchial bishops concerned, the patriarch or major archbishop can erect a tribunal of first instance for several eparchies of the same Church *sui iuris*, within the territorial boundaries of a patriarchal or major archiepiscopal Church (c. 1067 § 1). Such a tribunal is not an obligation, but an option to meet particular circumstances.
- b) Inter-eparchial tribunal erected by the synod: an inter-eparchial tribunal of first instance is obligatorily proposed if each of the eparchial bishops is unable for whatever reason to erect his own tribunal. The competent authority to establish such a tribunal within the territory is the synod of bishops. The eparchial bishops concerned have to observe the norms determined by the synod.⁷⁹
- c) Inter-eparchial tribunal outside the territory: since the patriarch and the synod of Bishops have no judicial power outside the territory, they are not competent to erect an intereparchial tribunal for the eparchies of the same Church

⁷⁹ C. 1067 § 2. According to SN the erection of such a tribunal was reserved to the Apostolic See or to the synod of bishops with the approbation of the Apostolic See (SN c. 38).

constituted outside its territorial boundaries. The procedure for the erection of such a tribunal outside the territory is the same as that of the Latin Church (see CIC c. 1423). The tribunal is erected by the eparchial bishops who have consented to this after having obtained the approval of the Apostolic See. The bishops are bound to follow the norms determined by the Apostolic See (cf. c. 1067 § 4).

The inter-eparchial tribunal is one of first instance, and the group of eparchial bishops who consented to have such a common tribunal has all the powers which an eparchial bishop has over his own tribunal. This power can be exercised also by an eparchial bishop elected by them. Within the territorial boundaries of a Church, appeals from an inter-eparchial tribu- nal are to be made to the ordinary tribunal of the patriarchal or major archiepiscopal Church. Outside the territorial boundaries, it is made to the tribunal designated in a stable manner by the group of bishops who erected an inter-eparchial tribunal with the approval of the Apostolic See or to the tribunal designated by the Apostolic See (c. 1067 § 5).

2.4.5. The Tribunal of Different Churches Sui Iuris

The eparchial bishops of different Churches sui iuris exercising their power within the same territory, can agree among themselves to establish a common tribunal to adjudicate contentious or penal cases of the Christian faithful subject to one or other of these eparchial bishops (c. 1068 § 1). The eparchial bishops who have consented to having a common tribunal are to designate one from among them who has the power which an eparchial bishop has regarding his own tribunal (c. 1068 § 3). Even if a common tribunal of different Churches sui iuris is established within the territorial boundaries of a Church, the patriarch or the synod will have no power over such a tribunal and appeals from sentences given in first instance are to be made to the tribunal designated in a stable manner by the Apostolic See (c. 1068 § 4). There is nothing in the Latin Code about inter-Church tribunals, so this provision of the Oriental Code may become supplementory law for the Latin Church as well. Thus Eastern eparchies and Latin dioceses in the same territory

might be able to establish a common tribunal.⁸⁰ When cases are processed in inter-Church tribunals, the law of the Church of the parties is to be applied.

2.5. The Judicial Power of the Synod of Bishops outside the Territory

Canon 1062 § 1 clearly states that the synod of bishops of the patriarchal Church constitutes the superior tribunal only "within the territorial boundaries of the patriarchal Church". As we have indicated above, according to canon 1062 § 2 bishops constituted outside the territory can be elected "general moderator" for the administration of justice or members of the synodal tribunal of three bishops. However, the general moderator for the administration of justice, though elected by the synod (whose members are all the bishops of the same Church), has the right of vigilance only over the tribunals within territory and has no power over the tribunals of the same Church constituted in the extra-territorial eparchies and metropolitan provinces (c. 1062 § 5). Similarly, though the synodal tribunal of three bishops can judge contentious cases of eparchies or bishops within the territory (c. 1062 § 3), the adjudication of such cases outside belongs to the competence of the Roman Pontiff and his tribunals (c. 1060 § 2).

According to canon 1064 § 2, in cases of first instance tried before a metropolitan outside the territory of the patriarchal Church, the appeal is to be made to the tribunal which the metropolitan has designated in a stable manner, with the approval of the Apostolic See, and not to the synod of bishops. A tribunal of first instance for several eparchies of the same Church sui iuris within the territory can be erected by the patriarch or the synod, but outside the territory such a tribunal is erected by the eparchial bishops who have consented to this and with the approval of the Apostolic See (c. 1067). Appeals from this tribunal are to be made to the tribunal designated in a stable manner by the bishops who decided to having such a tribunal with the approval of the Apostolic See or to the tribunal designated by the Apostolic See (c. 1067 § 5).

⁸⁰ J. H. PROVOST, "Some Practical Issues for Latin Canon Lawyers from the Code of Canons of the Eastern Churches", The Jurist 51 (1991) 64.

In summary, the judicial system of eparchies and archeparchies outside the proper territory of a patriarchal or major archiepiscopal Church is equivalent to that of the Latin Church (cc. 1064-1065; CIC c. 1483). Within the territory of a patriarchal or major archiepiscopal Church, there is provision for judgment in three instances of the case, up to the final sentence with the exception of cases reserved to the Roman Pontiff: but outside the territory the tribunal of the third instance is always the Apostolic See (c. 1065). In short, the synod of bishops has no judicial power outside the territory. The anomaly is that according to common law the bishops outside the territory also have a deliberative vote in a synod that judges a case in its capacity as the superior tribunal of a patriarchal or major archiepiscopal Church (they have also the possibility to be elected as the general moderator of justice or as members of the synodal tribunal of three bishops). but the same synod cannot judge these bishops or their eparchies nor has any judicial power over them.

2.6. Judicial Power of the Synod and the Tribunals of the Apostolic See

The fourth chapter of the apostolic constitution *Pastor Bonus* entitled "The Tribunals" (Arts. 117-130), enumerates three institutions: the Apostolic Penitentiary (Arts. 117-120), the Supreme Tribunal of the Apostolic Signatura (Arts. 121-125) and the Tribunal of the Roman Rota (Arts. 126-130). Of these, the Apostolic Penitentiary which has competence over the entire Church in the internal forum cannot be considered as a tribunal in the technical sense.⁸¹

The former law of the Eastern Churches, the *motu* proprio Sollicitudinem Nostram, dedicated one article (cc. 77-84) to the tribunals of the Apostolic See, namely the Roman Rota and the supreme tribunal of Apostolic Signatura. The new Code does not address the tribunals of the Apostolic See. But this does not mean that these tribunals are not competent to adjudicate cases of the Christian faithful of the Eastern Catholic Churches. Here we treat only the competence of

⁸¹ Z. GROCHOLEWSKI, "I Tribunali", in Bonnet P. & Gullo C., La Curia Romana nella Const. Ap. "Pastor Bonus", Studi Giuridici XXI, Città del Vaticano 1990, 396-397.

the tribunals of the Apostolic See with regard to patriarchal and major archiepiscopal Churches.

2.6.1. The Competence of the Roman Rota

Though the Roman Rota judges some cases reserved to itself at the first or second instance, it is primarily a court of higher instance of the Apostolic See constituted to hear appeals especially at the third instance, with the purpose of safeguarding rights within the Church. The synod of bishops is the superior tribunal within the territorial boundaries of a patriarchal or major archiepiscopal Church which judges cases (except those reserved to the Roman Pontiff in c. 1059) up to the final definitive sentence without any further appeal. Therefore, normally the Roman Rota is not competent to judge cases within the territorial boundaries of a patriarchal or major archiepiscopal Church without prejudice to canon 1059, which permits any of Christ's faithful to defer their case to the Roman Pontiff at any stage or grade of the trial.

As we have already explained, according to the present law, outside the delimited territory of a patriarchal or major archiepiscopal Church the synod has no judicial power over the eparchies and archeparchies of the same Church and therefore the Roman Rota is as much competent as in the Latin Church. Canon 1060 states that outside the territory, bishops in contentious cases are tried by the tribunal designated by the Roman Pontiff. According to canon 1405 § 3 of CIC 1983 and Pastor Bonus Art. 128, it is reserved to the Roman Rota to judge bishops in contentious cases. Therefore it seems that the pope would designate the Roman Rota for the trial of bishops in contentious cases outside the territory. There is no difference between the dioceses and archdioceses of the Latin Church and those of the Eastern patriarchal or major archiepiscopal Churches outside the territory regarding judicial procedures and trials. According to CIC 1983 canon

⁸² Pastor Bonus, Art. 126.

⁸³ If somebody in accordance with canon 1059 submits his case to the Roman Pontiff and if the case is forwarded to the Roman Rota, it can adjudicate in the first and further instances. Similarly the Rota is competent to judge cases reserved to the Roman Pontiff (c. 1060) if the Pontiff commits such cases to the Rota.

1444 and CCEO canon 1065 the tribunal of third instance is always the Roman Rota, the normal court of appeal.

2.6.2. The Competence of the Supreme Tribunal of the Apostolic Signatura

The tribunal of Apostolic Signatura is composed of twelve cardinals nominated by the pope, one of whom is designated by him as a prefect. Though the Apostolic Signatura judges challenges of various kinds against the decisions of the Roman Rota and handles all controversies arising from administrative acts, its main task is to oversee and invigilate at the proper administration of justice in the whole Catholic Church.⁸⁴ In the Eastern Churches, the competence of the Apostolic Signatura to exercise vigilance over the correct administration of justice is guaranteed by canon 1062 which states that the synod of bishops of the patriarchal Church, with due regard for the competence of the Apostolic See, constitutes the superior tribunal within the territorial boundaries of the patriarchal Church. Furthermore, the Apostolic Signatura is the place of final recourse against an administrative decree of a patriarch or the Congregation for the Oriental Churches (or any other dicastery of the Roman curia).85 For the eparchies and archeparchies of a patriarchal or major archiepiscopal Church constituted outside its territory, the Apostolic Signatura is as much competent as in the Latin Church.

2.7. The Judicial Power of the Synod and Other Departments of the Roman Curia

We have already indicated the competence of the Apostolic Penitentiary, the tribunal of the Roman Rota and the supreme tribunal of the Apostolic Signatura over the

⁸⁴ Pastor Bonus, Arts. 121 & 124 n. 1.

The Apostolic Signatura is competent to decide recourse against administrative decrees of the patriarch if the question is deferred to the Apostolic See or if the one who suffered injustice appeals to the Roman Pontiff (CCEO c. 1006). Only the Apostolic Signatura is competent to decide a recourse lodged against administrative acts whether issued by the dicasteries of the Roman Curia or approved by them (PB Art. 123).

Eastern Churches. But an accurate examination of the apostolic constitution *Pastor Bonus* witnesses that in addition to these dicasteries and the Congregation for the Oriental Churches (which has general competence), the Congregation for the Doctrine of the Faith, the Congregation for Divine Worship and the Discipline of the Sacraments and the Congregation for the Causes of Saints exercise their power over Eastern Churches in specific matters:

- 1. The Congregation for the Doctrine of the Faith: according to *Pastor Bonus* article 48 the proper function of this Congregation is to promote and safeguard the doctrine on the faith and morals in the whole Catholic world (in universo catholico orbe); so it has competence over things that touch this matter in any way. This Congregation functions also as a tribunal and examines offences against the faith, and if need be, proceeds to the declaration or imposition of canonical sanctions in accordance with the norms of common or proper law.³⁶ The dissolution of the marriage bond by the application of the *Pauline Privilege* in favour of the faith is the exclusive competence of this Congregation.⁸⁷
- 2. The Congregation for Divine Worship and the Discipline of the Sacraments: it is the exclusive competence of this Congregation to examine the fact of non-consummation in a marriage and the existence of a just cause for granting a dispensation. It receives all the acts together with the *votum* of the bishop and the remarks of the defender of the bond, weighs them according to its own special procedure, and, if the case warrants it, submits a petition to the Supreme Pontiff requesting the dispensation. Sacred Ording to the present law the synod of a patriarchal or major archiepiscopal Church is not competent to substitute the work of the Congregation. Similarly only this dicastery is competent to examine the cases concerning the nullity of sacred Ordination and requests for the dispensation from celibacy.
- 3. Congregation for the Causes of Saints: this Congregation deals with everything which leads to the

⁸⁶ Pastor Bonus, Art. 52.

⁸⁷ Cf. CCEO cc. 854-861; CIC cc. 1143-1150; Pastor Bonus, Art. 53.

⁸⁸ Pastor Bonus, Art. 67; cf. CCEO c. 862; CIC c. 1142.

canonization of the servants of God whether in the Orient or in the Occident. According to the present law only this Congregation is competent to judge whether everything required is present for a favourable recommendation to be submitted to Supreme Pontiff for the beatification or canonization of a person in accordance with the norms issued by the same Pontiff.⁸⁹ Therefore, after the completion of the diocesan investigation, all the acts are to be forwarded to this Congregation. From a juridical point of view, the synod of bishops or the patriarch has nothing to do with regard to the beatification or canonization of a member of their Church.

According to the new Oriental Code, the synod of bishops is the supreme judicial authority of a patriarchal or major archiepiscopal Church. The patriarch alone or with the permanent synod has no judicial power over the whole Church. As any other bishop, the judicial power of the patriarch is limited within the frontiers of his eparchy in accordance with law. The synod of bishops, the superior tribunal, together with the synodal tribunal of three elected bishops and the ordinary tribunal of the patriarchal or major archiepiscopal Church and other minor tribunals forms a perfect judiciary system within the territorial boundaries of a Church sui iuris which judges in three instances of the case (with the exception of cases reserved to the Roman Pontiff). up to the final sentence, without prejudice to the competence of the Roman Pontiff and the Apostolic See. However. according to the present Eastern law outside the territorial boundaries of a patriarchal or major archiepiscopal Church the Eastern judiciary system is not applicable.

3. The Synod of Bishops and the Election of Patriarch or Major Archbishop

In the first millennium, the synod of bishops of each Church elected the patriarch without any intervention from the bishop of Rome. The role of the bishop of Rome at the

⁸⁹ Pastor Bonus, Art. 72; the norms for the canonization of the servants of God are contained in the Ap. Const. Divinus perfectionis Magister promulgated by Pope John Paul II on 25 January 1983; see AAS 75 (1983) 349-355.

election of the patriarchs normally consisted of a letter of response to the synodal letter with which the one elected communicated to him of the election already accomplished. The pope congratulated the elected and in this manner acknowledged the legitimacy of election: thus the new patriarch entered into communion with the pope without any other juridical act. 90. Accordingly a person became patriarch through election and not through the confirmation by the Roman Pontiff. It is remarkable that the elected notified not only the pope but also other patriarchs of his elevation to the patriarchal office, asking their communion. The expression of mutual communion, especially with the bishop of Rome, was decisive because it guaranteed the orthodoxy of faith and validity of canonical election. The pope could deny communion to the elected, but only when the invalidity of the election or the lack of Catholic faith was proved.91

3.1. The Election of the Patriarch and the New Concept of Patriarchal Power in the Second Millennium

In the second millennium patriarchal power was conceived as a participation in the supreme power of the pope, and consequently was bestowed by the pope upon the occupants of the patriarchal sees as a privilege. Consequently,

Cf. W. DE VRIES, La S. Sede ed i patriarcati", 319; Rom und die Patriarchate des Ostens, 18; "The Origin of Eastern Patriarchates", 55-59; V. PARLATO, L'ufficio patriarcale, 67 and 103-107; H. J. SCHULZ, "The Dialogue with the Orthodox", 69; H. MAROT, "The Primacy and the Decentralisation", 14; M. M. WOJNAR, "Decree on the Oriental Catholic Churches", The Jurist 5 (1965) 199. A. COUSSA, describes the procedure as follows: "Ab exordiis usque ad annum 1837 quo S. C. de P. F. decretum de hac re edidit, Patriarchae legitime electi plenam potestatem patriarchalem exercebant, nulla, ex parte confirmationis pontificae existente delimitatione. Unde ne fieri potest quaestio de eorum actum validitate. De pacifice et canonice paracta electione Romani Pontifices gaudium exprimebant, quod synodi electoralis Patres peragerant agnoscebant, et cum electo gratulabantur". See Epitome paelectionum de iure ecclesiastico orientali vol. I, Rome 1948, 248 n. 237. For the letters of the Pope congratulating the newly-elected patriarch and thus recognizing the legitimacy of election, see ARP nos. 57, 59, 71, 103, 131, 140, 149, 151, 163, 223, 369.

⁹¹ For examples of denial of communion, see ARP nos. 176, 177, 226, 290, 308, 316.

one became really patriarch not through the election but through the confirmation or installation in office by the Apostolic See. Thus confirmation of the patriarch by Rome logically became equal to an appointment to the office. ⁹² About the new concept of patriarchal power W. De Vries writes:

In the second millennium, on the contrary, we find a fundamentally different conception of the patriarch's position of preeminence. Now this is understood as a participation in the power of the pope, and consequently is granted by the pope as a privilege to the occupant of the patriarchal throne. Accordingly the confirmation of the patriarchs logically becomes an appointment to the office. The hegemony of the patriarchs is no more the general right of self-determination in the fields of liturgy, canon law and discipline, but rather the sum of exactly determined and limited individual privileges, freely granted by Rome, which, even when taken all together, mean far less than the old autonomy of the first millennium.⁹³

This situation was caused by the development of monarchic ecclesiology in the West which attributed *plenitudo potestatis* to the Roman Pontiff, along with the new concept of patriarch brought about by the appointment of Latin patriarchs in Oriental regions during the Crusades.⁹⁴ Rome considered

[&]quot;Il patriarca non diventa realmente tale per l'elezione, che del resto nei documenti pontifici viene comunemente chiamata 'electio seu postulatio', ma lo diviene solo con la conferma o l'insediamento da parte della S. Sede. Prima di tale conferma egli viene chiamato 'electus seu postulatus patriarcha'. Nelle bolle di conferma si dice regolarmente: 'Praeficimus te in patriarcham' o qualcosa di simile". W. DE VRIES, "La S. Sede ed i patriarcati", 348.

⁹³ W. DE VRIES "The Eastern Patriarchates and Their Relationship to the Power of the Pope", 130; "Die Entstehung der Patriarchate des Ostens", 359; cf. also W. DE VRIES, "La S. Sede ed i patriarcati", 344-352; Rom und die Patriarchate des Ostens, 247-296; V. PARLATO, L'ufficio patriarcale, 113-114.

⁹⁴ "La création de patriarches latins à la suite de la quatrième croisade a conduit à l'idée que les privilèges patriarcaux étaient une concession venant de la papauté [...]". Y. CONGAR, "Le pape comme patriarche d'occident: approche d'une réalité trop négligée", Istina 28:4 (1983) 381; "Church Structures and Councils in the Relations between East and West", One in Christ 11 (1975) 229; cf. W. DE VRIES, Rom und die

the Latin patriarchates of that time not as a new creation but rather as the continuation of the original Oriental patriarchates. Regarding this point H. J. Schulz observes: "The change of attitude came about largely through the regrettable erection of Latin patriarchates in the East during the crusades. Rome saw in these patriarchates the rightful heirs of the former Eastern sees, but considered their incumbents in the same way as the Latin metropolitans in the West whose particular position could hardly be interpreted otherwise than as a special sharing in the supreme power of the pope".95 Consequently, those Oriental patriarchs who came into full communion with the Catholic Church were treated just as the Latin patriarchs appointed by Rome.

Gradually the pallium, which was indispensable for the exercise of metropolitan jurisdiction in the West from the ninth century and later for the Latin patriarchs, was made mandatory for the patriarchs in general by the Fourth Lateran Council (1215). Regarding the dignity of patriarchs and the significance of the pallium the Council states:

Renewing the ancient privileges of the patriarchal sees, we decree, with the approval of this sacred universal synod, that after the Roman church, which through the Lord's disposition has a primacy of ordinary power over all other churches in as much as it is the mother and mistress of all Christ's faithful, the church of Constantinople shall have the first place, the church of Alexandria the second place, the church of Antioch the third place, and the church of Jerusalem the fourth place, each

Patriarchate des Ostens, 248; "Die Entstehung der Patriarchate des Ostens", 359-361. Latin patriarchates were created in Jerusalem in 1099, in Antioch in 1100. The Fourth Crusade led to the occupation of Constantinople and the creation of a Latin patriarchate there in 1204, and a bit later in 1209 in Alexandria, Cf. Annuario Pontificio 1997, 1798-1799; G. REZAC, "The Extension of the Power of the Patriarchs and of the Eastern Churches in General over the Faithful of Their Own Rite", Concilium 8 (1969) 60; T. KANE, The Jurisdiction of the Patriarchs of the Major Sees in Antiquity and in the Middle Ages, Washington 1949, 77-82. In January 1964 Pope Paul VI suppressed the Latin patriarchates of Constantinople, Alexandria and Antioch, cf. Annuario Pontificio 1997, 1799.

⁹⁵ H. J. SCHULZ, "Dialogue with the Orthodox", 69.

maintaining its own rank. Thus after their pontiffs have received from the Roman Pontiff the pallium, which is the sign of the fullness of the pontifical office, and have taken an oath of fidelity and obedience to him, they may lawfully confer the pallium on their suffragans, receiving from them for themselves canonical profession and for the Roman church the promise of obedience.⁹⁶

In accordance with the decree of the council the pallium was imposed also on Oriental patriarchs who came into full communion with the Catholic Church.⁹⁷ The pallium was considered the symbol of the fullness of papal power, and by means of the pallium patriarchal and other jurisdictions were considered as an emanation of and a participation in the plenitudo potestatis of the Roman Pontiff. Its bestowal meant precisely the conferment of this participation and thus the conferment of office.⁹⁸ The same idea of patriarchal privileges is clear in the profession of faith made by Michael Paleologus at the Council of Lyons (1274):

The fullness of the power of the Roman Church consists in that she admits the other Churches to share in her solicitude; this same Roman Church has honoured many, and particularly patriarchal Churches, with various privileges.⁹⁹

⁹⁶ Fourth Lateran Council, c. 5; TANNER, DEC 1, 236; ALBERIGO-PRODI, COD, 212.

⁹⁷ W. DE VRIES, "La S. Sede ed i patriarcati", 326-339; For the historical analysis of the imposition of the pallium on the heads of Oriental Churches, G. ORIOLI, "La collazione del pallio", Nuntia 2 (1976) 93-96.

⁹⁸ H. MAROT, "The Primacy and the Decentralization", 14. For a detailed analysis of the meaning of the pallium and the effects of its bestowal on the Eastern patriarchs, see W. DE VRIES, Rom und die Patriarchate des Ostens, 247-260; "The Eastern Patriarchs and Their Relationship to the Power of the Pope", 134-136; "Die Entstehung der Patriarchate des Ostens", 362-365; V. J. POSPISHIL, Code of Oriental Canon Law, The Law on Persons, 123.

⁹⁹ Michael Peleologus' profession of faith on 6 July 1274: "Ipsa quoque Sancta Romana ecclesia Summum plenum primatum principatum super universalem ecclesiam catholicam obtinet [...]. Ad hanc autem sic potestatis plenitudo consistit, quod ecclesias ceteras ad solicitudinis partem admittit; quarum multas patriarchales praecipue, diversis

On account of these developments the synodal election of patriarchs became almost equal to a suggestion of candidates. The laws on the election of the patriarch in Cleri Sanctitati (cc. 221-239) were formulated almost in conformity with the concept of patriarchal power in the second millennium. This is evident from the very structure of CS and the systematic arrangement of the canons. The canons concerning patriarchs are located after those dealing with the cardinals of the holy Roman Church (cc. 175-187), the Roman curia (cc. 188-210). and the legates of the Roman Pontiff (cc. 211-215). The general title itself under which the canons on patriarchs are located. namely De suprema potestate deque iis qui eiusdem sunt canonico iure participes, indicates that patriarchs are granted in canon law a share in the Supreme Power which belongs to the Roman Pontiff. Prof. Clarence Gallagher is very clear about this point:

It is only in Chapter VI that the current law for the eastern Churches comes to deal with the patriarch (cc. 216-314). The order is itself significant and expresses an underlying ecclesiology. Interesting, too, is the heading given to this whole section of the law: "De suprema potestate deque iis qui eiusdem sunt canonico iure participes". This implies that the patriarchs are granted by canon law a share in the supreme power that, by divine law, belongs only to the Bishop of Rome. In this view patriarchal jurisdiction is understood as a participation in or a derivation from the power of the Roman Pontiff, similar to that granted by the pope to the Roman congregations. 100

In short, the patriarchal power according to CS is nothing but a participation in or a derivation from the supreme power of the Roman Pontiff. Consequently, confirmation from the Roman Pontiff is considered absolutely necessary for the validity of patriarchal election.

privilegiis eadem Romana ecclesia honoravit [...]". MANSI 24, 71.

C. GALLAGHER, "The Concept of Protos", 99-100; cf. also V. J. POSPISHIL, Code of Oriental Canon Law, The Law on Persons, 114; E. EID, La figure juridique du patriarche, 91-99.

3.2. The Election of Patriarch and Vatican II

Vatican II speaks about the concept of Eastern patriarchs, the juridical relationship of bishops appointed outside the territory to the mother Church, equality of patriarchs, the rights and privileges of patriarchs and the power of patriarchal synods (OE 7-11); but it does not directly deal with the election of the patriarch. However, the free election of patriarchs in accordance with the ancient tradition of the Oriental Churches is implied in many of the affirmations of the Council. The Council declares that "the patriarchate as an institution has existed in the Church from the earliest times, and was already recognized by the first ecumenical councils" (OE 7), and "the rights and privileges of patriarchs are to be restored in accordance with the ancient traditions of each Church and the decrees of ecumenical councils" (OE 9). The Council further specifies that "these rights and privileges are those which existed in the time of union between East and West", and "the patriarch with their synods are the highest authority for all business of the patriarchate" (OE 9). From these affirmations it is clear that the patriarch, who is the pater et caput of a Church, is to be freely elected "in accordance with the ancient traditions of each Church" and according to the manner of election that "existed in the time of union between East and West". Moreover, it is the right and obligation of the synod of bishops "the highest authority for all the business of the patriarchate", to freely elect the hierarchical head of the Church. Therefore. Vatican II envisages the free election of the patriarch in accordance with the practice of the first millennium.

3.3. Election of Patriarch according to the New Code in Comparison with *Cleri Sanctitati*

The new Oriental Code revised and updated the laws of CS concerning the election of patriarch in harmony with genuine Oriental traditions and the original figure of the patriarch rehabilitated by Vatican II. According to the Code the patriarch is canonically elected in the synod of bishops of the patriarchal Church, observing canons 947-957 which determine the general norms of election, in addition to the norms set forth by common law (cc. 63 and 67).

3.3.1. Convocation of the Members of the Synod

According to ius commune, the synod of bishops must be convoked within one month of the vacancy of the See, in the patriarchal residence or in another place to be designated by the administrator of the patriarchal Church with the consent of the permanent synod. The particular law can establish a longer period for the convocation of the synod, but not beyond two months. 101 In the election of the patriarch, all and only the members of the synod enjoy an active vote. 102 Therefore, all the consecrated eparchial and titular bishops inside and outside the territory participate in the synod of election of the patriarch with active vote. For all other sessions of the synod, for the expedition of certain matters, nonepiscopal hierarchs and experts can be invited to give their opinions to the bishops (c. 102 § 3). However, for the election of the patriarch, nobody other than the members of the synod is allowed to be present in the hall at the election (c. 66 § 2). except those clerics who can be admitted as tellers or secretary of the synod according to the norm of particular law. 103 According to CS the involvement of laymen in any manner in the election of the patriarch is prohibited (c. 224 § 3), but the new Code stipulates that it is not permitted for anyone either before or during the synod to interfere in any manner with the election of the patriarch. Thus not only laymen, but the interference of bishops or patriarchs of other Churches or any other person is prohibited. 104 In normal cases there is no provision for any kind of intervention of the Roman Pontiff or

 $^{^{101}}$ CCEO c. 65 \S 1 and 2; according to CS c. 223 the maximum time given for the convocation of the synod is one month, the particular law can establish only a shorter period.

¹⁰² For the members of the synod in detail, see chapter two, heading n. 3.

^{103 &}quot;Scrutatores et actuarius ad normam iuris particularis assumi possunt etiam inter presbyteros et diaconos". CCEO 71 § 1.

[&]quot;Nemini licet ullo modo sive ante Synodum Episcoporum Ecclesiae patriarchalis sive ea durante electioni Patriarchae se immiscere. CCEO c. 66 § 3, In the SCCHEO sent to the Oriental hierarchs for observation the canon was as follows: "Praeter Sedem Apostolicam vel Synodi sodales, nemo quoquo modo, sive ante Synodum sive durante, in electionem Patriarchae se immittere potest". Nuntia 19 (1984) 26, c. 33 § 3. Later the clause "Praeter Sedem Apostolicam [...]" was omitted because six organs of consultation expressed grave

the Apostolic See by way of prior consultation or subsequent approval or consent before the proclamation and enthronement of the new patriarch. However, the Roman Pontiff has the possibility of participation after the synodal election and enthronement of the new patriarch by granting or refusing ecclesiastical communion (c. 76 § 2) or in extraordinary cases if an election is not successful within fifteen days (c. 72 § 1).

3.3.2. The Necessary Quorum

The convocation having been legitimately made 105 if two-thirds of the bishops who are obliged to attend the synod of bishops are present in the designated place, the synod is canonical and it can proceed with the election (c. 69). All bishops lawfully convoked are bound by a grave obligation to take part at the election (c. 68 § 1). All ordained bishops are members of the synod and have equal rights and obligations. but if they are not convoked according to the canons, they have no obligation to be present in the synod. Those who are detained by a legitimate impediment are excluded in calculating the quorum, and the legitimacy of the impediment itself is determined by the bishops who are present in the designated place at the first session of the synod according to the norm of canon 68 § 2.106 Bishops who have resigned from office are not obliged to attend the synod, and if absent, are not to be included in the total number of bishops obliged to attend. The two-thirds presence is required by law in ius commune only for the election of the patriarch and bishops (c. 183 § 1) of a Church because of the great importance of these synodal acts which affect the whole patriarchal Church. For all other sessions of the synod, if the majority of the

difficulty in accepting it. "Vel Synodi sodales" was also omitted because it is understood that the members of the synod can intervene in the election as they are members. Cf. Nuntia 22 (1986) 48-49.

 $^{^{105}}$ For legitimate convocation, see CCEO c. 948 §§ 1, 2, 3.

¹⁰⁶ The norms concerning quorum are practically the same in the new Code and in CS c. 226. Thus if there are 30 bishops in a Church, and 20 bishops are legitimately impeded, there is sufficient quorum for the election of a patriarch, provided that 7 bishops are present.

bishops who are obliged to attend it, is present, the synod is canonical and any given balloting valid (c. 107 § 1). The synod of election is presided over by the administrator, till the synodal fathers elect a president in the first session (c. 70).¹⁰⁷

3.3.3. The Required Majority

According to CS. two-thirds majority is absolutely necessary for a person to be elected patriarch (c. 230 § 1) and the balloting must be repeated until two-thirds of the votes have been cast for a candidate (c. 230 § 2). If election is not accomplished within fifteen days from the beginning of the synod, the Roman Pontiff designates the patriarch directly. The new Code in ius commune (c. 72 § 1) retains the requirement of two thirds majority as in CS. But ius particulare can establish that after an appropriate number of ballotings, at least three, an absolute majority of the votes suffices and that the election be brought to an end according to the norms of canon 183 §§ 3-4.108 Hence if the particular law of a Church has so decided, after three inconclusive ballotings, in the fourth balloting votes are caste only between those two candidates who got the greater number of votes in the third balloting (c. 183 § 3). If in the third or fourth balloting, because of a tie vote it is not plain who the candidate is for the new balloting or who has been elected, the tie is resolved in favour of the one who is senior by presbyteral ordination; if no one precedes the others by presbyteral ordination, the one who is senior by age (c. 183 § 4).

If the election is not completed within fifteen days from

Particular law can establish other norms for the presidency of the synod of election. According to CS, it was the senior bishop according to episcopal consecration (c. 227). The phrase of CS 227 "unless the Apostolic See has decreed differently in a particular case" is omitted in the new Code.

¹⁰⁸ For example, according to the particular law of the Syro-Malabar Major Archiepiscopal Church, "During ballot the one who obtains two-third of the votes is elected Major Archbishop, if after five ballots no one gets the required number of votes, absolute majority would be sufficient in the sixth and seventh ballots; but if no one gets absolute majority even in the seventh ballot according to c. 183 §§ 3,4, the votes are caste in the eighth ballot for only those two candidates who have secured the highest number of votes in the seventh ballot (c. 72 § 1)". Synodal News (February 1994) 57.

the beginning of the synod, the matter devolves to the Roman Pontiff (c. 72 § 2). This is an ultimate measure in extraordinary situations to make sure that a patriarchal see may not remain vacant, being unable to elect the patriarch. According to CS, after fifteen days the Roman Pontiff directly appoints the patriarch, 109 but the new Code states only that "the matter devolves to the Roman Pontiff". He can either designate the patriarch or give new directives and admonitions for election.

3.3.4. Proclamation and Enthronement

According to CS if the elected person accepts, the synod can proceed immediately according to the regulation of his rite to the proclamation and enthronement, provided that he is a legitimately elected and confirmed bishop (c. 235 § 2). In the case of a person legitimately elected and confirmed who has not yet received episcopal consecration, he shall be consecrated bishop before enthronement (c. 235 § 4).

An attempt by the Commission to go backward from the norms of CS was later abandoned. In the case of an election of a bishop to be patriarch, the Study Group thought that it would be appropriate to inform the Roman Pontiff before the proclamation and enthronement, and thus the phrase "misso nuntio Romani Pontifici" was inserted into the canon. But in the draft of the Code sent to Oriental Hierarchies for consultation the phrase "audito Romano Pontifice" appeared, the inclusion of which was widely criticized by Oriental hierarchies. Seven organs of consultation, in the words of the Relator, "quasi tutti di grande pondus sociolo-

^{109 &}quot;Electione intra quindecim dies ab inita Synodo non peracta, designatio personae Patriarchae ad Romanum Pontificem, eo in casu, devolvitur". CS c. 232.

[&]quot;Si electus acceptaverit et sit Episcopus ordinatus Synodus, misso nuntio Romani Pontifici, procedat, iuxta praescripta liturgica suae Ecclesiae, ad eius proclamationem et inthronizationem [...]". Nuntia 2 (1976) 49.

[&]quot;Si electus acceptaverit et sit Episcopus ordinatus Synodus, audito Romano Pontifice, procedat, iuxta praescripta liturgica suae Ecclesiae, ad eius proclamationem et inthronizationem [...]". Nuntia 19 (1984) 28, c. 44.

gicum", asked for the omission of the phrase "audito Romano Pontifice". These organs desired in substance that the new canon should not regress from CS canon 235 § 2, promulgated before Vatican II, where no such condition is found.¹¹²

Other four organs of consultation pointed out that this clause could be understood in the sense of "confirmatio electionis" which would give the impression that "the patriarchs have been reduced to the level of major archbishops for whom in can. 129 (of the draft) is prescribed that they must, after their election 'expostulare a Romano Pontifice sua electionis confirmationem". 113 Because of these objections made by various organs of consultation, the Commission decided to omit the phrase "audito Romano Pontifice". 114 Therefore, according to the new Code just as in CS canon 235 § 2. if the one who has been elected is at least a legitimately proclaimed bishop, his election must immediately be intimated to him according to the accepted formula and formality of each patriarchal Church (c. 73). If the one who is elected accepted the election and is an ordained bishop, the synod of bishops can immediately proceed to the proclamation and enthronement according to the liturgical books (c. 75). If the one who is elected is not yet an ordained bishop, he must receive episcopal consecration before the enthronement (c. 75).

3.3.5. The Case of an Election of a non-Episcopal Person

Though only ordained bishops of a Church are members of the synod, they are free to elect even a non-legitimately proclaimed person to the office of the patriarch; in that case the canonical procedure for the episcopal

¹¹² Nuntia 22 (1986) 55.

The Relator reports: "Nel gruppo di studio sono state esaminate e considerate anche altre osservazioni relativa alla stessa clausola come p.e. l'obiezione secondo cui essa, anche se verbalmente diversa, potrebbe essere intesa nel senso di 'confirmatio electionis'; con ciò si ritornerebbe al can. 258 § 2 del CS e si darebbe l'impressione che 'the patriarchs have been reduced to the level of major archbishops', per i quali infatti nel can. 129 si prevede la norma che debbono dopo la loro elezione 'expostulare a Romano Pontifice sua electionis confirmationem'". Nuntia 22 (1986) 56.

¹¹⁴ See Nuntia 22 (1986) 56.

proclamation is to be completed before the publication of the result of the election. According to CS canon 235 § 3, if the patriarch-elect is a person who has not yet been legitimately elected and confirmed for episcopacy, the synod shall immediately notify the Roman Pontiff of the result of the election, which suspends the proclamation and enthronement. The fathers of the synod must keep secrecy concerning every aspect of the election, even towards the one elected, until the confirmation has arrived and lawfully been made public. After the confirmation from the Roman Pontiff is received, proclamation, episcopal consecration and then enthronement can be carried out (c. 235 § 3 n. 3); if confirmation is denied, the synod has to proceed at once to a new election (c. 235 § 4 n. 4).

Also in the new Code (c. 73), if the one who has been elected is not a bishop or has not vet been lawfully proclaimed bishop all who in any way have come to know the outcome of the election have to maintain secrecy, even toward the one elected; and the canonical procedure for episcopal proclamation is to be accomplished according to the new norms of election of bishops, which are different from CS. Thus if the elected one is not even a legitimately proclaimed bishop but is on the list of candidates approved by the Roman Pontiff for episcopacy in accordance with canon 182 §§ 3-4, he is to be notified of his election according canon 184. If the one elected is not even on the list of candidates for episcopacy approved by the Roman Pontiff, the president of the synod is to submit his name to the Roman Pontiff for assent according to canon 185. The synod of bishops is to be temporally suspended until the response is received from the Roman Pontiff. Having completed all the canonical requirements for the episcopal proclamation, the synod can assemble again and proceed to the proclamation of the elected, episcopal consecration and finally enthronement as patriarch. If the Roman Pontiff does not approve the candidate, the synod has to proceed to a new election.

3.3.6. Synodal Letter and Request for Ecclesiastical Communion

According to CS canon 236, both the synod and the patriarch should report to the Roman Pontiff about the canonical accomplishment of the election as well as the

profession of faith and the oath of fidelity made by the patriarch through separate letters. The synod and the patriarch also have to request ecclesiastical communion and the pallium which is an insignia of the fullness of the pontifical office. 115 In the new Code just as in the CS, with a synodal letter the synod has to inform the Roman Pontiff at the earliest about the canonical conduct of the election and of the enthronement of the new patriarch and promise to exercise his office faithfully, but need not make any request for ecclesiastical communion or pallium (c. 76 § 1). Only the newly elected patriarch has to request ecclesiastical communion from the Roman Pontiff by a personally signed letter (c. 76 § 2). The request for the pallium is omitted in the new Code. because by its very signification the pallium is an insignia of the power of archbishops and metropolitans which does not agree with the dignity of an Oriental patriarch, as confirmed by Vatican II. 116 The synodal letter is sent not only to the Roman Pontiff but also to other patriarchs of Eastern Churches in accordance with the ancient tradition (c. 76 § 1).

3.3.7. Acquisition of Office

The authenticity of the synodal act of election of the patriarch depends also on the question whether the elected acquires the office by election itself or by another legal act of the superior authority. In CS, the patriarch canonically elected and enthroned obtains only "plenum ius in officio" and not the office itself¹¹⁷, and he is prohibited from convoking

[&]quot;Novus Patriarcha de electione canonica ad Romanum Pontificem referre debet, additis documentis, propria manu subscriptis, de emissa, iuxta probatas formulas, coram Synodo, professione fidei deque iureiurando fidelitatis praestito, simulque ab eodem expostulare ecclesaisticam communionem et pallium, quod est plenitudinis officii pontificalis insigne. Synodus ad Romanum Pontificem, per synodicas litteras, eodem tempore referat de electione ad normam iuris peracta atque de fidei formula ac fidelitatis iureiurando a novo Patriarcha coram ipsa Synodo recitatis et subscriptis, itemque petat pro Patriarcha ecclesiasticam communionem et pallium". CS c. 236.

OE 7; Nuntia 19 (1984) 8; cf. Nuntia 22 (1986) 56; Nuntia 28 (1989) 33. Though not requested, according to the present practice, the pallium will be conferred on the newly elected patriarch by the Roman Pontiff.

the patriarchal synod and carrying out the election and consecration of bishops before he has received confirmation and the pallium from the Roman Pontiff. Accordingly, it seems that the granting of confirmation and pallium practically becomes an appointment, because he obtains his office by confirmation; if it is denied, the newly elected loses his rights to the office and the synod has to elect another patriarch. In the new Code, by election and enthronement the patriarch obtains not "plenum ius in officio" but the office itself (pleno iure officium obtinet) with full effects of law. Therefore, a person becomes patriarch "with full effects of law" by the synodal election and enthronement and not by the intervention of any superior authority. This is a great progress made in the new Code consonant with the common tradition of the Church.

3.3.8. Reception of Ecclesiastical Communion and Its Juridical Effects

The patriarch who obtains the office "with full effects of law" is prohibited from convoking the synod and ordaining bishops - as if these activities do not belong to his office - before he receives ecclesiastical communion from the Roman Pontiff just as in CS where confirmation from Roman Pontiff is necessary. ¹²⁰ The request of an organ of consultation to state simply that the patriarch validly elected enters into communion with the Roman Pontiff at the earliest, without putting conditions for the exercise of his functions, was rejected by the Commission. ¹²¹ The reason given was that

^{117 &}quot;Patriarcha ad normam can. 235 electus et inthronizatus plenum ius in officio obtinet firma § 3". CS c. 238 § 1.

^{118 &}quot;Patriarcha legitime electus et inthronizatus, antequam in Consistorio confirmationem et pallium sollemniter receperit, prohibetur ne Synodum patrairchalem de qua in can. 340 § 1 convocet Episcopos sive eligat sive ordinet". CS c. 238 § 3.

^{119 &}quot;Patriarcha canonice electus valide exercet suum officium tantummodo ab inthronizatione, qua pleno iure officium obtinet". CCEO c. 77 § 1.

^{120 &}quot;Patriarcha, antequam communionem ecclesiasticam a Romano Pontifice accepit, ne Synodum Episcoporum Ecclesiae patriarchalis convocet neque Episcopos ordinet". CCEO c. 77 § 2.

whenever bishops exercise collegial authority or a bishop is ordained, the action must be performed while in full communion with the head of the college of bishops, the Roman Pontiff. 122 When the whole Draft was sent for consultation, the same opinion was again expressed: after the election, the patriarch should ask for the ecclesiastical communion of the Roman Pontiff, without depriving him, because of this, of the ordinary exercise of patriarchal power, manifested in the convocation of the synod and ordination of the bishops. 123 With regard to the ecclesiastical communion of the patriarch one may note the following:

1. According to the Catholic theology, no bishop or patriarch can exercise his powers in the Catholic Church unless he is in communion with the college of bishops and its head, the pope (LG 21 & 24). This communion can be distinguished as ontological and ecclesiastical. By the very fact of valid episcopal consecration all bishops participate in the same priesthood and ministry of Christ and thus enter into an ontological sacramental communion which unites the bishops with Christ and with other members of the one and undivided episcopal college, whose head is the pope. Ecclesiastical or hierarchical communion is only an external

¹²¹ Nuntia 22 (1986) 57.

¹²² "Ubicumque enim collegialiter potestas ab Episcopis exercetur vel Episcopi eliguntur, ibi constare debet de plena cum Collegii Capite communione ecclesiastica". Nuntia 22 (1986) 57; Cf. also Nuntia 19 (1984) 9.

^{123 &}quot;Sembra che ci sia una contraddizione tra i due paragrafi del can. 76. Il patriarca esercita a partire della sua intronizzazione il suo ufficio 'pleno iure', ciò che afferma il § 1. Ma il § 2 gli proibisce di convocare il Sinodo dei Vescovi e di consacrare dei Vescovi, prima di aver ottenuto la comunione ecclesiastica dal Pontefice Romano. La convocazione del Sinodo e la consacrazione dei Vescovi non sono parte integrante del suo ufficio? Si ritiene pertanto che si potrebbe invitare il patriarca a chiedere, dopo la sua elezione, al Pontefice Romano la comunione ecclesiastica, senza privarlo, a causa di ciò, dell'esercizio ordinario del suo potere patriarcale, manifestato nella convocazione del Sinodo e la consacrazione dei Vescovi. Una tale soluzione rialzerebbe il prestigio del Patriarca agli occhi dei suoi fedeli e delle altre Chiese senza arrecare pregiudizio al primato, e alla dignità del Romano Pontefice". Nuntia 28 (1989) 34.

juridical expression of the already existing ontological sacramental communion. Only those bishops (and patriarchs) who are in ecclesiastical or hierarchical communion with the head of the college and its members can exercise their powers in the Catholic Church.

- 2. A Catholic bishop elected and enthroned as a patriarch by the synod of a Catholic Eastern Church is already in ontological as well as ecclesiastical (or, hierarchical) communion with the pope and all other members of the college. In the Catholic Eastern Churches normally bishops (if a nonepiscopal person is elected, he is to be consecrated bishop in accordance with the canons before his enthronement as patriarch) who are already in ecclesiastical communion with the pope, are elected patriarchs and there is no reason to believe that a bishop loses his ecclesiastical communion only because he is elected and enthroned as a patriarch. Hence it does not seem reasonable to believe that a Catholic bishop who is elected as a patriarch has not been in communion with the pope before the reception of ecclesiastical communion as stipulated in the Code.
- 3. Therefore, the prohibition of the patriarch from convoking the synod and ordaining bishops on the pretext of ecclesiastical communion is theologically untenable. This is to be seen against the background that this synod has performed one of its most powerful synodal acts, namely the election of the patriarch, having been convoked by the administrator. If this administrator himself is elected and enthroned as a patriarch, he cannot convoke the synod again. The ordination of bishops is not precisely a patriarchal function; a metropolitan can also ordain and enthrone bishops in his province (cc. 133 § 1, n. 1, 745). But if a metropolitan is elected patriarch, he cannot ordain bishops again before the reception of ecclesiastical communion. Therefore, it would be more consonant with the ancient tradition and the spirit of Vatican II to oblige the patriarch to renew the already existing ecclesiastical communion with the pope as early as possible since he is elevated to the position of the pater et caput of a Church, but without putting conditions for the exercise of the functions which belong essentially to his office.

3.4. The Election of a Major Archbishop

The synod of bishops of a major archiepiscopal Church elects the major archbishop according to the norm of canons 63-74 (c. 153 § 1). Thus the procedure of election is the same as that of the patriarch until the notification of the person who is elected. But after the acceptance of the election, the synod of bishops must notify the Roman Pontiff through a synodal letter about the canonical conduct of the election. Meanwhile, the one who is elected must send a personal letter to the Roman Pontiff for the confirmation of the election. 124 So by synodal election the person becomes only an elected candidate for the major archiepiscopate and does not posses any rights attached to that office. An act which requires a confirmation, although in itself complete, is not yet firmus. not permanent. The elected one has not acquired the ius in re. that is the full right to the office, but only ius ad rem, a right towards that determined office. 125 Thus in the case of an election of a major archbishop, the Roman Pontiff may examine the correctness of the procedure followed in the election, the suitability of the candidate for the office, especially the orthodoxy of his faith and finally may confirm the election. After having obtained confirmation, proclamation and enthronement can be made. But if the one elected is not yet an ordained bishop, first of all he must be ordained bishop for the validity of enthronement (c. 153 § 3). If confirmation is denied. a new election is to be conducted within the time fixed by the Roman Pontiff (c. 153 § 4). The Roman Pontiff can deny confirmation to a major archbishop elect only if there are serious defects in the canonical procedure or if the unsuitability of the candidate, especially the lack of Catholic faith, is proven.

As we have already indicated, after having obtained confirmation of the election from the Roman Pontiff, the one

[&]quot;Post acceptationem electi Synodus Episcoporum Ecclesiae archiepiscopalis maioris per litteras synodicas Romanum Pontificem certiorem facere debet de electione canonice peracta; ipse vero electus per litteras manu propria subscriptas expostulare debet a Romano Pontifice suae electionis confirmationem". CCEO c. 153 § 2.

¹²⁵ Cf. M. BROGI, "Nomine vescovili nelle Chiese orientali cattoliche", Kanon 7 (1985) 133.

who is elected must make a profession of faith and promise to carry out faithfully his office; then proclamation and enthronement can be made (c. 153 § 3). The procedure for the reception of ecclesiastical communion from the Roman Pontiff after the enthronement is the same as that of a patriarch. Evidently the major archbishop cannot convoke the synod or ordain bishops before the reception of ecclesiastical communion. Thus two juridical acts of the Roman Pontiff are absolutely necessary for the installation of a new major archbishop: confirmation of the election and the conferral of ecclesiastical communion after enthronement.

4. The Synod of Bishops and the Election of Bishops

According to the undivided tradition of the Church, the bishops and metropolitans were freely elected by the synods of each Church without any intervention from other Churches. The Ecumenical Councils and the important provincial councils exclusively reserved the election of bishops to the provincial synods. ¹²⁶ In the words of W. De Vries, "We do not know in the first millennium any case of a direct nomination of a metropolitan or a simple bishop from Rome, within the territory of Oriental patriarchates". ¹²⁷ Prior to the re-establishment of the patriarchates of those Churches that came into full communion with the Catholic Church and the celebration of their respective synods, bishops were elected in the provincial synods on the basis of the absolute majority of votes, taking into consideration the desires of the Christian people. ¹²⁸

Ecumenical councils- Nicaea cc. 4, 6; Cf. Chalcedon c. 28; Nicaea II c. 3;
 Provincial synods - Antioch, cc. 19, 23; Cf. Sardica c. 5; Laodicea c. 12;
 Carthage c. 12. For detailed analysis see chapter one, heading n. 4.1.

[&]quot;Non conosciamo nel primo millennio nessun caso di una nomina diretta di un metropolita o di un semplice vescovo da parte di Roma avvenuto nel territorio dei patriarcati orientali". W. DE VRIES, "La S. Sede ed i patriarcati", 321; Cf. also Rom und die Patriarchate des Ostens, 20; also V. PARLATO, L'ufficio patriarcale, 80-87; M. M. WOJNAR, "Decree on the Oriental Catholic Churches", 202.

¹²⁸ Cf. J. KHOURY, "La sceltà dei vescovi nelle Chiese orientali", Concilium 6 (1981) 53.

In the Western Church also the election of bishops was the right of the local Church. Pope Innocent I urged that election of bishops should be conducted according to the norms of Nicaea. ¹²⁹ According to Pope Leo the Great, it is the right of each local Church in immediate communion with other Churches to elect the bishops. ¹³⁰ According to Tillard, "The first ten centuries know nothing of any formal intervention of the bishop of Rome in the nomination of bishops. Everything happened at the local level: co-option, ordination implying the community's assent and above all the prayer of epiclesis calling on the Spirit, along the lines described in the Apostolic Tradition of Hippolytus (chap.2)". ¹³¹ Congar also points out that for many centuries bishops were elected and episcopal sees were erected without any intervention from the bishop of Rome. ¹³²

4.1. Election of Bishops and the Churches that Came into Full Communion

In the Maronite and Melkite patriarchal Churches, bishops were freely elected by the patriarch with the synod in accordance with the spirit of ancient canons. The name of the newly elected bishop was communicated to the Apostolic See for information. The Apostolic Letter *Reversurus*.

^{129 &}quot;Primum, ut extra conscientiam metropolitani episcopi nullus audeat ordinare (Dist. LXIV, c. 5); integrum enim est iudicium, quod plurimorum sententiis confirmatur: nec unus episcopus ordinare praesumat; ne furtivum beneficium praestitum videatur. Hoc enim et in Synodo Nicaena constitutum est, atque definitum". Epistola 2, PL 20, 471-472.

¹³⁰ Epistola 14, PL 54, 673.

¹³¹ J. M. R. TILLARD, L'évêque de Rome, Paris 1982, 224.

^{&#}x27;Il est donc historiquement et théologiquement discutable de dire: 'Ce droit d'instituer les évêques appartient par nature au pontife romain'. Car il faut distinguer. Ce pontife peut engager son titre de primauté dans l'acte de nommer des évêques, mais son titre de primauté n'exige pas cela. Pendant des siècles, les évêques ont été élus, et même des sièges ont été créés sans aucune intervention du pape, qui possédait cependant sa primauté et l'exerçait à l'occasion'. Y. CONGAR, "Le pape comme patriarche d'occident", 389-390.

¹³³ M. BROGI, "Nomine vescovili", 128; J. KHOURY, "La sceltà dei vescovi", 53-55 & 57.

promulgated by Pope Pious IX on 12 July 1867, regulated the appointment of bishops in the Armenian Church. 134 According to Reversurus, the patriarchal synod can prepare a list of three candidates and present the list to the Roman Pontiff for appointment in a vacant eparchy. The pope can freely appoint the new bishop from the list or anyone whom he wishes if none of the candidates on the list is found worthy. 135 The same procedure was introduced in the Chaldean Church by the Apostolic Constitution Cum ecclesiastica disciplina of 31 August 1869. 136 Later, in 1987, this procedure was modified according to the request of the Armenian and Chaldean patriarchs. Accordingly, the patriarch must convoke the synod and elect a single candidate, who must be presented to the Roman Pontiff for confirmation. 137 The same procedure was followed also in the Syrian and Coptic Churches. 138 In the non-patriarchal Churches, bishops were directly appointed by Roman Pontiff, just as the Latin bishops, according to the procedure of nominating bishops in the Latin Church.

4.2. Election of Bishops according to Cleri Sanctitati

1. The Ordinary Procedure: in the motu proprio Cleri Sanctitati promulgated in 1957, we find two kinds of procedures for the election of bishops in the patriarchal Churches. According to the normal procedure of CS, the patriarch collects the information and documents necessary to establish the worthiness of the candidate for episcopacy (c. 252 § 1). The patriarch convokes the "synod of election", and the fathers gathered in the synod freely elect him whom before God they regard worthy and qualified above others, on the basis of absolute majority, without prejudice to the

¹³⁴ ASS 3 (1867) 386-393; R. De MARTINIS, *Iuris Pontificii de Propaganda Fide*, pars I, vol., V I, 1, 453-458.

ASS 3 (1887) 392; R. DE MARTINIS, Iuris Pontificii de Propaganda Fide, pars I, vol.VI, 1, 457-458; CIC Fontes, vol. 3, 7.

¹³⁶ PIUS IX, "Cum ecclesiastica disciplina", R. DE MARTINIS, Iuris Pontificii de Propaganda Fide, pars I, vol. VI, 2, 34.

¹³⁷ M. BROGI, "Nomine vescovili", 127.

¹³⁸ Cf. J KHOURY, "La sceltà dei vescovi", 56.

particular law of any Church that reserves to the patriarch the right of providing the names of candidates (c. 252 § 2). After the election, the patriarch shall immediately submit a report of the election to the Roman Pontiff in order to obtain confirmation of the elected (c. 253 § 1). It is prohibited to reveal the name of the one elected to anybody not even to the elected himself, before the authentic notification of confirmation (CS c. 253 § 2). If confirmation is denied, the only possibility is to convoke the synod again and to elect another person, because according to canon 392 § 2, bishops are freely appointed by the Roman Pontiff or, if lawfully elected, confirmed by him. 139 Thus, the procedure does discredit to the patriarch and to the synod if the candidate is not confirmed by the Roman Pontiff. In short, according to this procedure. a bishop becomes bishop not by election but by the confirmation of the Roman Pontiff and thus the election becomes almost equal to the suggestion of a candidate to the Bishop of Rome for appointment.

- 2. The Expeditious Procedure: according to the second form of election, in the words of the canon "in order to expedite the appointment to vacant eparchies", a list of candidates can be prepared by the synod of bishops, of priests qualified for episcopacy in a secret vote by absolute majority. This list must be submitted to the Roman Pontiff for his approval. After the approval has been obtained, the synod of bishops can elect from this list anyone to episcopal office in case of vacancy, erection of a new eparchy, etc., without any further intervention from Rome. The only obligation is to inform the Apostolic See that the election has taken place (c. 254 §§ 1-2). This form of election, which appears in CS as a secondary method to expedite the appointment of bishops, respects to a greater extent the right of the synod of bishops to elect their own bishops.
- 3. Election by Letter: in addition to the two procedures treated above, *Cleri Sanctitati* canon 255 foresees another form of election, namely election by letter, whenever the synod cannot be convoked. After obtaining permission

 $^{^{139}}$ "Eos Romanus Pontifex libere nominat, aut legitime electos confirmat". CS c. 392 \S 2.

from the Apostolic See, the patriarch seeks the votes of bishops by letter. The requirement for papal approval is the same as formulated in canons 253-254.

4.3. Election of Bishops and Vatican II

The right of the synod of a Church to elect its own bishops in accordance with the genuine tradition and the canons of the Councils of the undivided Church and the right of Rome to intervene in the synodal election of Oriental bishops have always been a matter of conflict between Rome and the Oriental patriarchs in the second millennium. The patriarchal synods desired to elect their bishops freely. At the same time Rome wanted to avoid unworthy persons from episcopacy. In this context Vatican II declared that the patriarchs with their synods, the highest authority for all matters in the patriarchate, have the right to appoint bishops of their own Church within the patriarchal territory, "without prejudice to the inalienable right of the Roman Pontiff to intervene in any particular case". 140 Ius interveniendi means the power to intervene if the pope judges it opportune. Ius interveniendi does not carry with it the obligation to intervene. namely the necessary and mandatory exercise of this right. The fact that the pope has the right to intervene in the nomination of bishops never signifies that he must necessarily intervene. or that without his prior or subsequent intervention the patriarch with his synod cannot validly and licitly elect bishops. 141 Accordingly, the intervention of the Roman Pontiff in the election of Oriental bishops cannot be a common or general phenomenon but an extraordinary measure, "in any particular case" and in case of necessity to avoid unworthy

^{140 &}quot;Patriarchae cum suis synodis superiorem constituunt instantiam pro quibusvis negotiis patriarchatus, non secluso iure constituendi novas eparchias atque nominandi episcopos sui ritus intra fines territorii patriarchalis, salvo inalienabili Romani pontificis iure in singulis casibus interveniendi". OE 9.

¹⁴¹ N. EDELBY & I. DICK, Les Églises orientales catholiques, décret "Orientalium Ecclesiarum", Unam Sanctam 76, Paris 1970, 360-361; cf. also C. PUJOL, Decretum Concilii Vaticani II "Orientalium Ecclesiarum", textus et commentarium, Romae 1970, 86; D. FALTIN, "L'institution synodale dans le Concile Vatican II", 50.

candidates. Therefore, an intervention in each case as in CS, by way of confirmation does not seem to be in conformity with the conciliar teaching. Thus a compromise formula became necessary which, on the one hand, accepts the synodal right of Oriental Churches to elect their bishops and, on the other hand, respects the right of the Roman Pontiff to intervene in any particular case.

4.4. Election of Bishops and the Letter of the Congregation for Oriental Churches

On the basis of the conciliar decree. Patriarch Maximos IV of the Melkite Church wrote to Pope Paul VI on 8 April 1965 expressing his determination to freely elect new bishops according to the Oriental tradition without prior approval or subsequent confirmation of Rome. 142 This letter was followed by a series of communication between Rome and Patriarch Maximos IV. Finally the extraordinary synod of bishops of the Melkite Church on 11 January 1966 accepted a formula which safeguarded the right of the synod of bishops and at the same time the right of the pope to intervene if he judged it opportune in accordance with the conciliar decree. 143 This formula was acceptable to Rome, and the Congregation for the Oriental Churches in a letter on 22 June 1966 made it clear that this procedure was applicable for all the patriarchal Churches. 144 This letter accepted the second procedure of CS as the ideal one for the election of bishops. Thus in this letter we can find an inversion of exposition: the second form of election that suggests the presentation of a list of candidates with the aim to expedite the procedure of election appears in the first place. On the other hand, the more ancient procedure, where the synod presents to the Roman Pontiff the candidate already elected for confirmation, is relegated to the second place and is presented in a subordinate way. The first is considered as more normal 145

Copy of the letter in N. EDELBY & I. DICK, Les Églises orientales catholiques, 362-364.

¹⁴³ Cf. N. EDELBY & I. DICK, Les Églises orientales catholiques, 366-367.

¹⁴⁴ Cf. N. EDELBY & I. DICK, Les Églises orientales catholiques, 369-370.

¹⁴⁵ M. BROGI, "Nomine vescovili", 132-133.

According to the letter, the patriarch composes a list of worthy candidates for the future election of bishops (without any access to the synod) and presents it to the Roman Pontiff. The candidates are not subjected to "approval" of the Roman Pontiff. The patriarchs must ask the Holy See only whether there is any objection. Rome has the freedom to ascertain the suitability of the candidates and to exclude anybody from the list. When an election becomes necessary, the patriarch presents the list that has already obtained the assent or nihil obstat of the Roman Pontiff to the synod of election and the bishops freely elect the new bishop. In case the synod would have elected a bishop whose candidacy has not been presented to the Roman Pontiff, the patriarch must notify the Holy See and attend to its observations before divulging the decisions taken. 146 Thus this letter respects fully the right of the patriarch and synods to elect their bishops with a minimum of interference from the pope, which consists in giving his assent to the list of candidates already decided by the patriarch with the synod.147

4.5. Election of Bishops according to the New Code within the Territory of a Church

4.5.1. The Normal Procedure of Election

In CS, the canons which deal with the election of bishops (cc. 249-255) were arranged under the title *De iuribus et obligationibus patriarcharum* as if the appointment of bishops was a right of the patriarch. The *Coetus* decided to transfer these canons to *De episcopis*. ¹⁴⁸ Therefore, in the new Code, *De electione Episcoporum* appears as chapter I of Title VII, *De eparchis et de episcopis*. Canon 110 of the new Code which outlines the major powers of the synod of bishops clearly states that it is the synod of bishops that conducts the election of bishops (c. 110 § 3). The synod of bishops of a

¹⁴⁶ Cf. M. BROGI, "Nomine vescovili", 133.

¹⁴⁷ Cf. M. BROGI, "Nomine vescovili", 133-135.

¹⁴⁸ Nuntia 2 (1976) 51; Nuntia 9 (1979) 4.

patriarchal or major archiepiscopal Church fulfills this right and obligation according to the special norms for the election of bishops (cc. 180-189) and the general canons on election (cc. 947-957), provided by *ius commune*. In the new Code, the first procedure of election of CS canons 251-253 is given as an exception, and the second procedure in the spirit of the circular letter and the practice after Vatican II appears as the normal one. Naturally there are two steps for the election of bishops: the preparation of the list of worthy candidates and the real election of a bishop.

4.5.1.1. The Preparation of the List of Worthy Candidates

The basic orientation of the *Coetus* in revising the canons of CS on the election of Bishops was to underline in such an important matter the principle of effective collegiality, which requires co-responsibility and collaboration of all the bishops of an Oriental Church in the preparation of the list of worthy candidates for episcopacy. Therefore, emphasis was given to CS canon 254 which stipulates that the list of candidates be composed by secret vote by an absolute majority of the synod, safeguarding however the full liberty of the bishops to elect to the vacant sees also persons who are not on the list. The same co-responsibility requires that the bishops themselves, and not only the patriarch as in CS canon 252, collect information about the candidates whom they propose. To

Accordingly, all the bishops who are members of the synod can propose suitable candidates for the episcopacy, and the bishops themselves collect information and documents which are necessary to establish the suitability of the candidates. They can also consult if they think it appropriate, secretly and individually, certain presbyters or also other Christian faithful outstanding in prudence and Christian life. More specific norms concerning the collection of information can be stipulated by particular law (c. 182 § 1). The bishops

¹⁴⁹ Nuntia 9 (1979) 10.

¹⁵⁰ Nuntia 9 (1979) 10.

are to report their findings to the patriarch at a suitable time prior to the convocation of the synod. The patriarch can also gather additional information if the case warrants it, and he transmits the matter to all the members of the synod (c. 182) § 2). These provisions are intended to avoid unworthy candidates being designated as bishop. According to ius commune, the synod of bishops examines the names of the candidates proposed by the bishops and compiles a list of the candidates by secret ballot, by absolute majority. 151 Therefore. the composition of the list itself is a collegial act of all the members of the synod of a Church. However, ius particulare. approved by the Roman Pontiff, can reserve the right of proposing the names of candidates to the patriarch alone 152 The list of candidates prepared by the synod can contain either all the eligible candidates for episcopacy of a given Church sui iuris or only the names of those candidates for determined offices to be filled. The Code does not fix the minimum or

¹⁵¹ In CS c. 254 § 1 the list is to be made by "secret ballot by absolute majority". In the new Code only the phrase "secret ballot" is found, but according to ius commune it is clear that the list of candidates is to be made by absolute majority. Cf. cc. 107 § 1 and 924.

¹⁵² Nisi ius particulare a Romano Pontifice approbatum aliud fert, Synodus Episcoporum Ecclesiae patriarchalis nomina candidatorum examinet et secreto scrutinio elenchum candidatorum componat, qui per patriarcham ad Sedem Apostolicam mittatur ad assensum Romani Pontificis obtinendum. CCEO c. 182 § 3. The phrase "Nisi ius particulare a Romano Pontifice approbatum aliud fert" is not found in the initial texts; cf. Nuntia 9 (1979) 9-10 c. 6 § 2; Nuntia 19 (1984) 53 c. 150 § 3. But later this phrase was introduced in accordance with the suggestion of an organ of consultation to add to this paragraph of the canon the following: "firmo iure particulari quo ius nomina candidatorum proponendi patriarchae reservatur". According to this organ the clause is found in canon 252 § 2 n. 2 of CS and among the Maronites the patriarch always enjoys this right, Cf. Nuntia 23 (1986) 12. The Coetus in 1985 pointed out that the above-stated clause is found in CS 252, but the present canon is based on CS 254, where the context is entirely different. The Coetus did not wish to condition the free election of the candidates by a right of the patriarch. But later after long discussions, in order to satisfy the above-mentioned organ. the Coetus introduced the possibility of a particular law which allows the patriarch to propose the names of the candidates; however if any Church makes such a particular law it must be approved by the Roman Pontiff. Nuntia 23 (1986) 12-13.

maximum number of names that may be proposed,¹⁵³ but it is clear that the number of candidates should be determined in consideration of the future needs of each Church *sui iuris*.

Through the patriarch, the synod of bishops shall send the list of candidates to the Roman Pontiff for his assent or nihil obstat. According to CS canon 254 § 1, the list of candidates should be approved by the Roman Pontiff: a Sede Apostolica approbatus. In the new Code, the assent of the Roman Pontiff is needed: qui per patriarcham ad Sedem Apostolicam mittatur ad assensum Romani Pintificis obtinendum (c. 182 § 3). Assent in this context is a technical term that has the significance of consent given to a decision already taken by others. The assent given by the Roman Pontiff for an individual candidate is valid until it has been explicitly revoked. Once a name is explicitly revoked by the Roman Pontiff, the name of that candidate is to be removed from the list (c. 182 § 4).

4.5.1.2. The Real Election of a Bishop

The second stage is the real election of a bishop when a see becomes vacant or when a new eparchy is established. In such a situation the patriarch has to convoke the synod according to the canons. For the election of bishops, all eparchial and titular bishops of the Church sui iuris inside and outside the territory are to be summoned, all of whom eniov deliberative vote. The quorum necessary for the synod to be canonical is the same as that of the patriarchal election. namely the presence of two-thirds of the bishops who are obliged to attend the synod, excluding those who are legitimately impeded (c. 183 § 1). In CS, there is no mention of a special quorum for the election of bishops (cc. 251-257). Therefore, the general quorum required for the validity of any synod, namely the absolute majority of the fathers who enjoy a decisive vote, is enough also for the election of bishops. However, CS makes an exception for the quorum of the election of the patriarch in canon 226 § 1 which requires a quorum of two-thirds of those who enjoy active vote, excluding those who are detained by a legitimate impediment.

¹⁵³ Cf. M. BROGI, "Characteristics of Eparchial Structure", 60-61.

accordance with CS, the *Coetus* already decided to rétain the two-thirds presence for the patriarchal election. Now the *Coetus* decided to adopt the same quorum necessary for the validity of the synod of election of the patriarch for the election of bishops also. Therefore, a quorum is attained if two-thirds of the bishops are present who are obliged to attend and are not impeded by a legitimate impediment.

In CS the absolute majority of those who are present is required for the election of a bishop, and no other possibility is given for the accomplishment of election (c. 252 § 2 n. 3). According to the new Code, an absolute majority is also required for an election, but the new Code makes different provisions in order to ensure that the election is performed by the synod in any case. Therefore, after three inconclusive ballotings, in the fourth balloting the votes are cast only between those two candidates who received the greater number of votes in the third balloting (c. 183 § 3). If in the third or fourth balloting, because of a tie vote it is not plain who the candidate is for the new balloting or who has been elected, the tie is resolved in favour of the one who is senior by presbyteral ordination; if no one precedes the others by presbyteral ordination, the one who is senior by age (c. 183 § 4).

If the one elected is already on the list for which the Roman Pontiff has already given his assent or *nihil obstat*, he is to be intimated secretly by the patriarch of his election (c. 184 § 1). If the one elected accepts the election, the patriarch is immediately to inform the Apostolic See of the acceptance of the election and the day of proclamation (c. 184 § 2).

4.5.2. The Election of a Non-assented Candidate

The normal procedure of election of bishops as envisioned by the new Code is to elect somebody from the list of candidates prepared by the synod and assented (approved) by the Roman Pontiff. However, the Code does not restrict the freedom of the synod to elect any worthy person from the same Church to the episcopate. In short, the synod of bishops is also completely free to elect a person who is not on the list already assented by the Roman Pontiff. In such a case the

¹⁵⁴ Nuntia 9 (1979) 11.

procedure is almost the same as that of CS canon 250 § 2. The patriarch is immediately to inform the Apostolic See of the election that has been conducted in order to obtain the assent of the Roman Pontiff. Secrecy is to be observed by all who in any way know the outcome of the election, even toward the one elected, until the notification about the assent reaches the patriarch (c. 185 § 1). After obtaining the assent of the Roman Pontiff, the patriarch can proceed to inform the elected person; if he accepts the election, to the proclamation (c. 185 § 2). If the Roman Pontiff does not give his assent, then the synod has to elect another person.

4.5.3. Election of Bishops by Letter

As we have already pointed out according to canon 255 of CS, whenever the synod cannot be convoked, the patriarch with the permission of the Holy See can conduct the election by correspondence. The bishops shall send their votes to the patriarch by letter. For the validity of such procedure, the patriarch must make use of two bishops as tellers who should be designated according to the particular law. If there is no particular law in this regard, the patriarch can appoint the tellers with the consent of the permanent synod. The tellers together with the patriarch open the letters of the bishops, count the votes, and together with the patriarch subscribe to a written report of the election. The manner of the approval of the elected by the Roman Pontiff was the same as established in canons 253-254 which we treated above.

The new Eastern Code retained the same procedure for the election of bishops by letter in extraordinary circumstances (c. 186). According to CS the permission of the Apostolic See was required, but the Code obliges the patriarch only to consult the Apostolic See. Unil the counting of votes, the procedure is the same in CS and the new Code. If in this single balloting, one of the candidates obtains an absolute majority of the votes of the members of the synod, he is to be held elected (c. 186 § 3). If the one elected is on the list of candidates already assented by the Roman Pontiff, the patriarch can proceed to the intimation of the elected and his proclamation in accordance with canon 184. If the elected is not one of those on the list of candidates, the patriarch is immediately to inform the Apostolic See of the election in order

to obtain the assent of the Roman Pontiff (c. 185). The speciality of this procedure is that only one balloting can be conducted with the requirement of an absolute majority for election. If an absolute majority is not obtained or if the one elected does not accept the election or does not receive the assent of the Roman Pontiff, the patriarch is to defer the matter to the Apostolic See (c. 186 § 3). 155

4.6. Canonical Provision and Profession of Faith

According to the common tradition of the Church, a bishop was elected and ordained for a particular eparchy, and by ordination itself obtained all powers necessary for governing that eparchy. No distinction was made between the power of order and the power of jurisdiction. However, in the middle ages the development of monarchic ecclesiology obfuscated the theology of the episcopate, especially in the Western Church which led to a clear distinction or even separation between the power of order (the office of sanctifying) which derived from ordination and the power of jurisdiction (the offices of teaching and governing) which was conferred by the Roman Pontiff on the ordained. 156

The Orthodox Churches even today preserve the genuine tradition of the Eastern Churches regarding episcopacy. According to Zizioulas:

There is no episcopacy without a community attached to it. Here a detail must be stressed because it points to a peculiarity of Orthodoxy compared with the Roman Catholic theology: the mention of the name of the community takes place

¹⁵⁵ J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, 428.

¹⁵⁶ Cf. J. RATZINGER, Il nuovo popolo di Dio: questioni ecclesiologiche, Brescia 1971, 191-193; Y. CONGAR, Ministères et communion ecclesiale, Paris 1971, 95-97; "De la communion des Églises à une ecclésiologie de l'Église universelle", in L'Épiscopat et l'Église universelle, Unam Sanctam 39 (1962), 240-248; W. BERTRAMS, "De quaestione circa originem potestatis iurisdictionis Episcoporum in Concilio Tridentino non resoluta", Periodica 52 (1963) 465-469; "La collegialità episcopale", CC 115/1 (1964) 440; W. DE VRIES, "Grenzen des päpstlichen Primats", Wort und Warheit 26 (1971) 487-494.

in the prayer of ordination of a bishop. Since the Orthodox Church there is no missio canonica or a distinction between potestas ordinis and potestas iurisdictionis, the fact that the community is mentioned in the prayer of ordination means that the community forms part of the ontology of episcopacy: there is no bishop, not even for a moment or theoretically who is not conditioned by some community". 157

About the Orthodox concept of episcopacy, P. Duprey comments that canonical election and consecration are enough to constitute one as bishop of the Church for which he is consecrated: "He has by his very ordination, the three powers necessary for his function, so that there is no need, or even room for a 'canonical mission' [...]. Thus the Orthodox remain most perplexed by the 'missio canonica' and the texts in which it appears". ¹⁵⁸

The Second Vatican Council reinstated the original theology of the episcopate and established that "Episcopal consecration, along with the office of sanctifying, confers also the offices of teaching and governing; these however by their very nature can only be exercised in hierarchical communion with the head of the college and its members" (LG 22). The powers which the bishops receive from Christ through the action of the Holy Spirit in episcopal consecration can be exercised in the Catholic Church only in communion with the pope and the episcopal college.

In spite of the explicit assertion of the Council regarding the sacramental origin of all episcopal powers, some still maintain that the bishops receive only the power of Orders in episcopal consecration. According to G. Ghirlanda, "the authority to govern and authentically teach is transmitted to legitimately consecrated bishops by means of the canonical mission, which is a direct or indirect exercise of the power of the head of the hierarchical communion so that they can exercise their episcopal ministry in the Church entrusted to them". 159

 ¹⁵⁷ J. D. ZIZIOULAS, Being as Communion, 137; see also pages 197-198
 & 212-213 of the same book.

¹⁵⁸ P. DUPREY, "The Synodical Structure", 176.

¹⁵⁹ G. GHIRLANDA, "Universal Church, Particular Church, and Local

Regarding canonical mission, the new Eastern Code states: "For promoting anyone to the episcopate a canonical provision is necessary (necessaria est provisio canonica), by which he is constituted the eparchial bishop of a particular eparchy or a particular function in the Church is committed to him" (c. 187 § 1). 160 It is surprising that the Eastern Code which vowed fidelity to the genuine Eastern tradition makes such an absolute statement about canonical provision. If a person is elected and consecrated for a particular eparchy, the necessity of a canonical mission to constitute him as the eparchial bishop is not evident.

According to Lumen gentium, "The canonical mission of bishops come into being by means of lawful customs which have not been revoked by the supreme and universal power of the Church, or by means of laws made by that same authority or recognized by it, or directly by the successor of Peter himself; and if the latter opposes the appointment or refuses apostolic communion, the bishop cannot be admitted to office" (n. 24). Within the territorial boundaries of a patriarchal or major archiepiscopal Church, the patriarch or major archibishop should issue the letter of canonical provision within ten days of the proclamation of the election (c. 86 § 1 n. 1 & § 3).

Before the episcopal ordination, the candidate is to make the profession of faith and promise of obedience to the Roman Pontiff. In the patriarchal and major archiepiscopal Churches, the candidate is to make a promise of obedience also to the patriarch or major archbishop in those matters in which he is subject to the patriarch according to the norm of law (c. 187 § 2).

4.7. Episcopal Ordination and Canonical Possession

In normal cases, a person who is to be promoted to the episcopate must receive episcopal ordination within three

Church at the Second Vatican Council and in the New Code of Canon Law", in R. Latourelle, Vatican II Assessment and Perspectives Twenty-Five Years After (1962-1987) vol. 2, New York 1989, 250; cf. also "Hierarchica Communio"-significato della forma della Lumen gentium, Roma 1980, 410-429.

¹⁶⁰ It is remarkable that such a statement about "canonical provision" does not appear in the Latin code.

months from the day of proclamation. Within four months from the day of his election, the eparchial bishop must take canonical possession of his eparchy. If a person is prevented by a lawful impediment, he is dispensed from these requirements (c. 188). The eparchial bishop takes canonical possession of the eparchy by the lawfully conducted enthronement itself, at which the patriarchal letter of canonical provision is publicly read out (c. 189). The Apostolic See is to be informed as soon as possible of the episcopal ordination and enthronement (c. 86 \S 3).

4.8. The Appointment of Bishops outside the Territory of a Church

Before Vatican II, the bishops outside the territory of a patriarchal or major archiepiscopal Church were directly appointed by the Roman Pontiff just as the bishops of the Latin Church without any involvement of the patriarch or the synod in the procedure. Similarly these bishops directly depended upon the pope or the Apostolic See without any juridical relationship to the mother Church. Vatican II in its decree Orientalium Ecclesiarum (n. 7) established a new juridical relationship between the bishops who are constituted outside the territory and the mother Church, namely they are aggregated to the mother Church in accordance with canon law. The Declaration of the Congregation for the Oriental Churches on 25 March 1970, which defined the juridical figure of aggregatus, empowered the patriarch with the synod of bishops to propose a list of at least three candidates to the Apostolic See for appointment without prejudice to the right of the Roman Pontiff to appoint whom he wishes. The Declaration states:

With reference to the designation of hierarchs of his own rite for the faithful who are living outside the patriarchate, the patriarch in conjunction with his synod of election can, at the proper time, propose to the Apostolic See a list of at least three worthy candidates but the Roman Pontiff retains the right to appoint to offices of this kind whomever he himself prefers.¹⁶¹

^{161 &}quot;Designationem Hierarcharum proprii ritus pro fidelibus extra patirarchatus commorantibus quod attinet, Patriarcha cum Synodo

Later this norm of the Declaration was accepted into the new Oriental Code with redactional changes. Thus according to Code the synod of bishops can elect at least three candidates for filling the office of eparchial bishop, coadjutor bishop or auxiliary bishop outside the territorial boundaries of a patriarchal or major archiepiscopal Church according to the norms of the canons on the election of bishops, and through the patriarch or major archbishop proposes them to the Roman Pontiff for appointment. ¹⁶² From the words saltem tres it is clear that the synod of bishops is free to compose a list of more candidates according to the need of each Church sui iuris. Through the patriarch, the synod of bishops proposes the list of candidates to the Roman Pontiff for appointment outside the territory.

In the Declaration of the Congregation for the Oriental Churches which we cited above, it was explicitly stated that though the patriarch in conjunction with the synod can propose to the Apostolic See a list of at least three candidates, "the Roman Pontiff retains the right to appoint to offices of this kind whomever he himself prefers". However, this expression is not found in canon 149 because it is evident that according to canon 181 § 2 and the present practice the Roman Pontiff is not bound by the list of candidates presented by the synod of bishops, and he can freely appoint whom he wishes. This is also evident from the obligation of secrecy imposed by the same canon 149 on all who in any way know the outcome of the election. ¹⁶³ In short, though the appointment of bishops

electionum elenchum saltem trium ideonorum candidatorum Sedi Apostolicae, opportuno tempore, proponere valet, firmo iure Romani Pontificis nominandi ad huiusmodi officium quem ipse maluerit". AAS 62 (1970) 179.

^{162 &}quot;Candidatos, saltem tres, ad officium Episcopi eparchialis, Episcopi coadiutoris vel Episcopi auxiliaris extra fines territorii Ecclesiae patriarchalis implendum Synodus Episcoporum Ecclesiae patriarchalis ad normam canonum de electionibus Episcoporum eligit et per Patriarcham Romano Pontifici ad nominationem proponit secreto servato ab ominbus, qui quomodolibet electionis exitum noverunt, etiam erga candidatos". CCEO c. 149.

¹⁶³ In the initial stage of the revision, about this point the Relator expressed the following opinion: "The Holy Father should be guaranteed the liberty to act as deems fit. Several consultors for the

outside the territory is reserved to the Roman Pontiff, the synod of bishops is at least involved in the process. ¹⁶⁴ Only the Roman Pontiff can grant canonical provision to a bishop constituted outside the territory; however the patriarch is given *ipse iure* faculty (not his right) to ordain and enthrone metropolitans and bishops who have been appointed by the Roman Pontiff (c. 86 § 2).

The bishops appointed by the Roman Pontiff outside the territory directly depend upon the same Pontiff and the Apostolic See, and they do not seem to be responsible to the patriarch or synod. They send the official quinquennial report of their eparchies directly to the Apostolic See and not to the patriarch nor to the synod of bishops; only a copy of the report is to be sent to the patriarch as soon as possible (c. 206 § 2). The eparchial bishops constituted outside the territory are required to make ad limina visits every five years just like the bishops of the Latin Church; the law stipulates only that it is desirable that at least sometimes the visit is done together with the patriarch (c. 208 § 2). In case of resignation, such bishops send their resignation letters to the Roman Pontiff and not to the patriarch or synod of bishops, though the patriarch is to notified as soon as possible (c. 210 § 2).

5. The Synod of Bishops and Administrative Power

In CS the major administrative acts, such as the right to establish provinces and eparchies, change their boundaries, unite, divide, abolish, or change their hierarchical rank and transfer the episcopal see, are performed by the patriarch with the consent of the patriarchal synod, provided that the Apostolic See confirms the action. The patriarch can transfer resident or titular metropolitans and bishops from one to another residential or titular eparchy; accept the resignation of bishops submitted to him and assign a coadjutor or auxiliary

time being, feel that such a guarantee will be provided if the future code adds a clause obliging all the members of the synod to 'strictissimum secretum usquedum de nominatione nuntium ad Patriarcham pervenerit". *Nuntia* 6 (1978) 30.

J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, 361.

to a resident bishop with the consent of the patriarchal synod or of the bishops convoked for a synod of election. Similarly, the patriarch can with the consent of the permanent synod establish exarchies, change their boundaries, and abolish them. 165

In 1976, the *Coetus* was oriented towards transferring these major administrative powers, namely CS canon 248 §§ 1 and 2, to the section on the synod of bishops so that such major acts would become authentic synodal acts and not merely acts of the patriarch with the consent of the synod. ¹⁶⁶ Later in 1977, after long discussions the majority of consultors, who previously reserved the legislative and judicial powers completely to the synod of bishops, decided to deny administrative power to the synod, limiting a minimum of necessary cases to the competence of the synod. They also decided to insert this canon among the canons *De iuribus*

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¹⁶⁵ CS c. 248 § 1. Patriarcha de consensu Synodi patriarchalis vel Episcoporum ad normam c. 224 § 1, gravi ex causa, valet: 1. Provincias et Eparchias erigere, aliter circumscribere, unire, dividere, supprimere, earumye gradum hierarchicum immutare, sedemque episcopalem transferre, salva tamen Sedis Apostolicae confirmatione; 2. Metropolitas vel Episcopos residentiales aut titulares ab una ad aliam eparchiam residentialem vel titularem transferre; 3. Episcoporum renuntiationes ipsi factas acceptare; 4. Episcopo residentiali Coadiutorem vel Auxiliarem dare, servatis praescriptis can. 251-255, si designandus episcopali charactere non sit auctus.

^{§ 2.} Patriarcha de consensu Synodi permanentis potest exarchias erigere, earumdem fines immutare, supprimere.

^{§ 3.} De decisionibus Synodi circa negotia de quibus in § 1, nn. 2-4, § 2, Sedem Apostolicam Patriarcha quamprimum certiorem faciat.

On the basis of this decision the Relator also formulated the following canon as a basis for further discussion. § a. Actus administrativos Patriarchae quod attinet Synodus Episcoparum est organum consultivum nisi pro certis actibus ipse Patriarcha aliud statuat aut in iure communi actus aliqui Synodo episcoporum reservantur et firmis canonibus qui consensum vel consilium Synodi Episcoporum requirunt.

[§] b. Praeter alios casus iure communi statutos Synodo Episcoporum exclusive reservantur actus administrativi qui sequuntur: 1) Gravi de causa, et consulta per Patriarcham Sede Apostolica, provincias et eparchias erigere, aliter circumscribere, unire, dividere, supprimere, earumque gradum hierarchicum immutare, sedemque episcopalem transferre. 2) Episcoporum renuntiationes acceptare, episcopo residentiali coadiutorem vel auxiliarem dare servatis CS cann. 251-255 si designandus episcopus non sit; gravi de causa Metropolitas vel

patriarcharum.¹⁶⁷ According to this decision, canon 248, which deals with important administrative acts, is found with redactional changes in the new Oriental Code under chapter two of title four - De iuribus et obligationibus patriarcharum; and canon 110 § 4 clearly states that the synod of bishops of the patriarchal Church is not competent for administrative acts unless the patriarch determines otherwise for certain acts or common law reserves some acts to the synod,¹⁶⁸ with due regard for the canons which require the consent of the synod of bishops of the patriarchal Church.

Conclusion

In this chapter we examined the major powers of the synod of bishops. The synod of a Church enjoys ample legislative and judicial powers within the territorial boundaries of a Church. The synod of bishops of a patriarchal Church freely elects the patriarch and no confirmation is needed as in CS. However, the patriarch can exercise his major powers such as the convocation of a synod and the ordination of bishops only after having received the ecclesiastical communion from the Roman Pontiff. The synodal election of a major archbishop does not seem as authentic as that of a patriarchal election since the validity of election depends upon confirmation from Rome. The synod of bishops almost freely elects bishops for offices within the territory both in the patriarchal and major archiepiscopal Churches. The liturgical laws enacted by the synod and promulgated by the patriarch have the force of law everywhere in the world: but the disciplinary laws and other decisions of the synod bind only within the territory. Normally the synod of bishops has no judicial, electoral or administrative powers outside the territorial boundaries of a patriarchal or major archiepiscopal Church.

Episcopos sive residentiales sive titulares ab una ad aliam eparchiam residentialem vel titularem transferre. 3) De decisionibus Synodi circa negotia de quibus in nn. 1. 2. Patriarcha quamprimum Sedem Apostolicam certiorem faciat. *Nuntia* 7 (1978) 35-36.

¹⁶⁷ Cf. Nuntia 7 (1978) 36-37.

 $^{^{168}}$ For actions reserved by common Code to the Synod of Bishops see cc. 85 $\$ 2, n. 2; 108 $\$ 2; 122 $\$ 4; 144 $\$ 1; 211 $\$ 2; 664 $\$ 1; 1063 $\$ 2; 1067 $\$ 2-3, etc. See also chapter four.

Chapter Four THE RIGHTS AND OBLIGATIONS OF THE SYNOD OF BISHOPS

In the previous chapter, we presented the major powers of the synod of bishops of a patriarchal or major archiepiscopal Church such as the legislative and judicial functions along with the major synodal acts as the election of patriarch and bishops. Continuing the same process, in this chapter we examine other minor synodal acts and the rights and obligations of the synod expressed through the giving of consent in major administrative acts and important affairs of a patriarchal or major archiepiscopal Church. The rights and obligations of the synod of bishops are greater than that which are apparently seen in the Code. Since the synod of bishops makes the particular law, its powers are also extended to every aspect of ecclesial life regulated by particular law. Here we deal only with those powers which are explicitly stated in the common Code. It is to be particularly noted that since the principle of territoriality is rigourously applied in the new Code the synod has practically no right or obligation in the parishes and eparchies constituted outside the territorial boundaries of the same Church.

A. THE SYNODAL ACTS

1. Three Bishops for the Patriarchal Curia

As long as provision is made for their support, the synod of bishops can elect some bishops, but not more than three, for the patriarchal curia, according to the suggestion of the patriarch (c. 87). The normal procedure for the election, proclamation and ordination of bishops is to be observed also for the appointment of these bishops in accordance with canons 181 § 1 and 182-187. The election of some bishops for the patriarchal curia is neither obligatory nor necessary for the administration of the patriarchal Church. However, once elected they have some rights and obligations which can be also performed by other persons.

The main obligation of the bishops of the patriarchal curia is to assist the patriarch in his official duties. During a vacancy of the patriarchal see, the senior bishop according to episcopal ordination among the bishops of the patriarchal curia is the administrator of the patriarchal Church unless particular law determines otherwise (c. 127). The patriarch appoints an administrator for a vacant eparchial see after consulting the bishops of the patriarchal curia (c. 220 n. 2). In the event of the election or appointment of a financial administrator during the vacancy of an eparchial see, the bishops of the patriarchal curia are to be consulted by the patriarch (c. 232 § 3). Similarly when there is not sufficient time for the convocation of the permanent synod to deal with an urgent matter affecting several eparchies, the bishops of the patriarchal curia are to be consulted (c. 100).

It is to be noted that the same canons which determine the functions of the bishops of the patriarchal curia provide alternative norms for those Churches that have not nominated such bishops. Therefore the nomination of bishops of the patriarchal curia completely depends upon the decision of the patriarch or major archbishop and the synod. The ordination of titular bishops without any relationship to a Christian community is contrary to genuine Eastern tradition and must be avoided as far as possibile. Since the bishops of the patriarchal curia are titular bishops, their active votes in the synod can be restricted except in the cases of election of patriarch, bishops and candidates for episcopacy outside the territory (c. 102 § 2).

2. Statutes of the Synod of Bishops

The synod of bishops of a patriarchal or major archiepiscopal Church formulates and approves its own statutes in accordance with the common law and taking into account the provisions of particular law regarding membership, deliberative vote, procedure for the conduct of meetings, etc. (c. 113). No review or approval of the Apostolic See is needed before the promulgation of statutes.

3. Synod of Bishops and the Composition of the Permanent Synod

The permanent synod, an institution of the Church of Constantinople, was the assembly of bishops who were

resident in Constantinople or happened to be there at that time under the presidency of the patriarch to deliberate and decide important matters. The bishops of other Oriental patriarchates who happened to be in Constantinople at the time of the convocation also participated in the permanent synod.¹ All questions of importance were decided by the patriarch in a collegial manner in the permanent synod. The synodos endemousa, in Latin synodus permanens, was officially approved by the Ecumenical Council of Chalcedon (451) in the presence of papal legates.²

The synod was permanent in the sense that it could be convoked at any moment according to the seriousness of the situation, and because the Church considered herself in a state of permanent synodal consultation while the members of the hierarchy present, from the patriarch to the simplest bishop, acted in solidarity for the common good.³ The permanent synod at that time exercised legislative and judicial functions, and from the beginning of the ninth century, administrative functions as well, becoming the central administrative organ of the Byzantine Church.⁴

Cf. W. DE VRIES, "The College of Patriarchs", Concilium 8 (1965) 41; J. HAJJAR, "The Synod in the Eastern Church" 31; E. LANNE, "Un esempio classico: il sinodo come stile di vita", 237; L. WALDMÜLLER, "Das Konzil im Verständnis der Ostkirche", 147-180; E. HERMAN, "Appunti sul diritto metropolitico nella Chiesa Bizantina", OCP 13 (1947) 523-528; B. STEPHANIDAS, "Die geschichtliche Entwicklung der Synoden des Patriarchats von Konstantinopel", Zeitschrift für Kirchengeschichte 55 (1936) 128.

MANSI, 7, 92; J. HAJJAR, Le synode permanent, 44-51; "Synode permanent et collégialité épiscopale dans l'Église Byzantine au premier millénaire", in La Collégialité Episcopale, Unam Sanctam 52 (1963) 155; "La collegialità episcopale nella tradizione orientale", 821-822; "The Synod in the Eastern Church", 31; "Les origines du synode permanent", 125-128; E. LANNE, "Églises locales et patriarcats", 312-313.

³ J. HAJJAR, "The Synod in the Eastern Church", 32; "Synode permanent et collégialité épiscopale", 153-154; "La collegialità episcopale nella tradizione orientale", 822.

⁴ J. HAJJAR, Le synode permanent, 80-188; "Synode permanent et collégialité épiscopale", 156-164; "La collegialità épiscopale nella tradizione orientale", 823.

With the promulgation of the motu proprio Cleri Sanctitati in 1957 the permanent synod, originally an institution of the Constantinople Church, became obligatory for all the patriarchal and major archiepiscopal Churches. Both according to CS and the new Oriental Code, the permanent synod forms part of the patriarchal curia, and the canons on this synod are located under the heading De Curia Patriarchali.

The permanent synod consists of the patriarch as president and four bishops designated for a five-year term.6 This synod remains an organ that helps the patriarch or major archbishop in transacting matters of importance as described in canon 288 of CS.7 though it is not explicitly mentioned in the new Code.8 The only substantial change between CS and CCEO regarding the permanent synod concerns the manner of its constitution. According to CS, of the four bishops of the permanent synod, the synod of bishops elects only one bishop. the patriarch nominates one and the two others should be residential bishops designated according to priority of the date of episcopal consecration (c. 289). However, according to the new Code, the synod of bishops elects three members of the permanent synod and only one is nominated by the patriarch (c. 115 §§ 1-2). Two of the elected bishops must be eparchial bishops, others can be also titular. This substantial change was made so that the permanent synod may function as a representative body of the synod of bishops in the patriarchal curia in a permanent manner. Since no restriction is made on the basis of territoriality, the bishops set up outside the

⁵ CS cc. 287-296; CCEO cc. 114-120.

⁶ CS c. 289; CCEO c. 115 § 1.

^{7 &}quot;Patriarchae habere debent Synodum permanenter constitutam quae eos iuvet in maioris momenti negotiis expediendis quaestionibusque definiendis quae patriarchatum respiciunt". CS c. 288.

⁸ I. ZUZEK, "Patriarchal Structure", 52; J. HAJJAR, "Patriarchal Synods", 89.

⁹ "In canone 85 tres sodales Synodi permanentis proponuntur a Synodo Episcoporum eligendi ea mente ut maior pars sodalium (tres ex quinque) ipsam Synodum Episcoporum Ecclesiae patriarchalis constanter repraesentet". Nuntia 19 (1984) 10.

territory can be also elected as members of the permanent synod even though its powers are limited within the territory. In the manner of the constitution of the permanent synod, the synod of bishops has to designate four bishops who substitute alternatively for the impeded members of the permanent synod (c. 115 § 3). If for serious reasons the synod of bishops judges that a permanent synod cannot be constituted, the Apostolic See is to be notified, and the synod has to elect two bishops who act with the patriarch in the place of the permanent synod as long as the reason continues (c. 121).

Normally the patriarch convokes and presides over the permanent synod (c. 116 § 1). If the patriarch is impeded from attending the permanent synod, its sessions are presided over by the bishop who is senior by episcopal ordination (c. 116 § 2). The number of members of the permanent synod has to be restored to five by the participation of a bishop from among the four bishops designated by the synod of bishops for this purpose.

The Code delineates some of the functions of the permanent synod. In all matters which concern the entire patriarchal Church the patriarch is advised to hear the opinion of the permanent synod (c. 82 § 3). The patriarchal financial administrator must submit annually to the permanent synod a written report of the past year of administration as well as the budget for the coming year. He is to submit an administration report also whenever the permanent synod asks for it (c. 122 § 3). During the vacancy of the patriarchal see, if there is no "bishop of the patriarchal curia" the senior bishop according to episcopal ordination among the members of the permanent synod becomes administrator (c. 127).

According to the new Code, the permanent synod has no legislative, judicial or administrative power. It is a collegial body which represents the entire synod of bishops in a stable manner in the patriarchal curia, equilibrates the authority of the patriarch and conditions his decisions in important administrative matters by giving its consent or counsel.

The patriarch or major archbishop must seek the counsel of the permanent synod prior to acting in ten instances:

- 1. Official admonition of an eparchial bishop (c. 95 § 2)
- 2. Interpretation of laws enacted by the synod of bishops (c. 112 § 2)
- 3. Determination of the rights and obligations of a coadjutor bishop (c. 213 § 2)
- 4. Appointment of an administrator of a vacant eparchy if there are no bishops in the patriarchal curia (c. 220 n. 3)
- 5. Appointment of an eparchial financial administrator for a vacant eparchy if there are no bishops in the patriarchal curia (c. 232 § 3)
- 6. Erection of an association open to all the members of the Church (c. 575 § 1, n. 2)
- 7. Suppression of juridic persons established by the patriarch (c. 928, n. 1)
- 8. Certain alienation of temporal goods (c. 1037, n. 1)
- 9. Permission of committing to one judge cases reserved to a collegiate tribunal (c. 1084 § 3)
- 10. Appointment of judges who are not clerics (c. 1087 § 2)

 The following 32 acts of the patriarch or major archbishop require the consent of the permanent synod for their validity:
- Designation of a location for the patriarchal election other than the patriarchal residence by the administrator (c. 65 § 1)
- 2. Canonical visitation of a church, city or eparchy by the patriarch or through another bishop, for serious reasons (c. 83 § 2)
- 3. Establishment, modification or suppression of an exarchy (c. 85 § 3)
- 4. Exemption of a place or juridic person from the power of the eparchial bishop for a serious reason (c. 90)
- 5. Decision on matters involving several eparchies and civil authority (c. 100)
- 6. Invitation of a non-episcopal person to a session of the synod (c. 102 § 3)
- 7. Convocation of the synod by the decision of the patriarch (c. 106 § 1, n. 2)

- 8. Transfer of a certain matter belonging to the competence of the permanent synod to the synod of bishops (c. 119)
- 9. Appointment of a patriarchal financial administrator (c. 122 § 1)
- 10. Removal of the financial administrator in danger of delay (c. 122 § 2)
- 11. Convocation of patriarchal assembly outside the time prescribed by law (c. 141)
- 12. Designation of tellers in the election of bishops by letter if no provision is made in particular law (c. 186 § 1)
- 13. Acceptance of an episcopal resignation if it was not preceded by an invitation from the synod of bishops (c. 210 § 3)
- 14. Removal of an administrator of a vacant eparchy (c. 231 § 2)
- 15. Patriarchal provision for an impeded eparchy (c. 233 § 1)
- 16. Appointment of an exarch (c. 314 § 1)
- 17. Concession to certain religious institutes or associations the right to enroll clerics (cc. 357 § 1 & 579)
- 18. Enrollment or excardination of a cleric by the administrator (c. 363, n. 1)
- 19. Dismissal from the clerical state if there is a danger in delay (c. 397)
- 20. Suppression of an autonomous monastery (c. 438 § 1)
- 21. Disposal of the property that belongs to a suppressed monastic confederation against the will of the donors (c. 440 § 3)
- 22. Concession of the status of stauropegial monastery (c. 486 § 1)
- 23. Erection of an order or congregation (c. 506 § 2)
- 24. Elevation of a congregation of eparchial right to patriarchal right (c. 506 § 3)
- 25. Suppression of a patriarchal or eparchial religious congregation (c. 507 § 2)
- 26. Suppression of an association of the Christian faithful (c. 583 § 2 n. 1)

- 27. Alienation or perpetual transfer of significant relics, icons or images (c. 888 § 2)
- 28. Certain alienation of temporal goods (c. 1036 § 2 & 1037 n. 2))
- 29. Reduction, moderation or commutation of certain wills or reduction in the obligation of pious causes (c. 1054 § 3)
- 30. Substitution of members of the tribunal of the synod of bishops (c. 1062 § 2)
- 31. Appointment of officers to the ordinary tribunal of the Church (c. 1063 § 2)
- 32. Patriarchal threat with a certain penalty through precept (c. $1406 \S 1$)

4. Examination of the Financial Administration and Budget

The administration of the goods of the patriarchal Church is carried out by a patriarchal financial administrator appointed by the patriarch with the consent of the permanent synod. For the removal of a patriarchal financial administrator before the tenure determined by particular law, the patriarch needs the consent of the synod of bishops. The synod of bishops has the right to demand an administration report as well as the budget from the patriarchal financial administrator and subject them to its own examination (c. 122 § 4). The law does not accord the synod of bishops the right to approve a budget, but only to examine it. However, it would not be contrary to the common law if the particular law of a Church requires that the budget should be approved by the synod.

5. Synod of Bishops and the Expenses of the Patriarchal Curia

Normally the expenses of the patriarchal curia are paid from the fund of the patriarchal Church. If these are not sufficient, the individual eparchies have to share in paying the expenses, and the synod of bishops determines the amount to be paid by each eparchy (c. 125). It seems that the synod of bishops has authority to tax only the eparchies inside the

territorial boundaries of the Church unless the extraterritorial bishops desire to share voluntarily (c. 150 § 2).

6. The Synod of Bishops and the Resignation of the Patriarch or Major Archbishop

The Code does not prescribe any age for the resignation of the patriarch or major archbishop, for as "father and head" he remains patriarch or major archbishop until his death. Many proposals to prescribe an age for the resignation of the patriarch were rejected by the Commission, 10 but from canon 126 it is clear that the patriarch has the possibility to resign 11 out of his free will, in accordance with the general norms on resignation (cc. 967-971), before he loses his sound mind. 12 If the patriarch presents his resignation to the synod of bishops, it is competent to accept the resignation, having consulted the Roman Pontiff. 13 The synod must accept the resignation within three months; it takes effect when the patriarch is informed of the acceptance of the resignation (c. 970 § 1). The patriarch is also free to submit the resignation directly to the Roman Pontiff.

The failure of the Code to prescribe an age for the resignation of the patriarch or major archbishop shows the blindness of canon law to the human psycho-physical condition in the old age. About the retirement of bishops, *Christus Dominus* states: "Since, therefore, the pastoral work of bishops is of such great importance and is so serious, the diocesan bishops and those equivalent to them in law are earnestly requested to resign from their office voluntarily or if asked

The reason given for the rejection is as follows: "Il gruppo di studio ha concordato che non conviene regolare con norme giuridiche quelle relazioni tra Santo Padre e i Patriarchi che sono connesse con la solenne concessione della communio ecclesiastica". Nuntia 22 (1986) 93.

[&]quot;Sedes patriarchalis vacat morte aut renuntiatione Patriarchae". CCEO c. 126.

^{12 &}quot;Qui sui compos est, potest officio iusta de causa renuntiare". CCEO c. 967.

¹³ "Ad acceptationem renuntiationis Patriarchae competens est Synodus Episcoporum Ecclesiae patriarchalis consulto Romano Pontifice, nisi Patriarcha Romanum Pontificem directe audiit". C. 126 § 2.

by competent authority should it happen that, because of advancing years or for some other serious reason, they have become incapable of carrying on their work [...]" (n. 21). If the council calls for the resignation of bishops who have become "incapable of carrying on their work". how much more so should it be applied to the patriarch or major archbishop who has in addition to all the responsibilities of an eparchy. the burden of governing an entire Church sui iuris. Therefore. I am of the opinion that either there should be an age limit (for example the completion of 80 years) for the retirement of the patriarch or major archbishop; or there should be provision in canon law for requesting his resignation, considering the common good of the entire Church sui iuris, with a higher vote of two-thirds majority or common consensus of the synod of bishops, if the patriarch or major archbishop who has become incapable of governing the Church because of old age or disease has not voluntarily given up his office.

7. Synod of Bishops and Metropolitan Sees

The metropolitan is a bishop who presides over a certain province of a patriarchal or major archiepiscopal Church (c. 133 § 1). The common Code, which established only the minimum about the metropolitans of a patriarchal or major archiepiscopal Church (cc. 133-136), empowers the synod of bishops to define clearly the rights and obligations of metropolitans and metropolitan synods, according to the legitimate customs of each Church, taking into consideration the circumstances of time and place (c. 137). The Code explicitly states that the time of the convocation of the metropolitan synod is determined by the synod of bishops (c. 133 no .2). In addition to the rights and obligations stipulated in the common law, the synod of bishops can propose to the Apostolic See special norms concerning other rights and obligations of metropolitans outside the territory. Such special norms are to be approved by the Apostolic See, since the synod of bishops has no power outside the territory (c. 138).

8. The Synod Bishops and Patriarchal Assembly

The patriarchal assembly is a consultative body of the whole Church presided over by the patriarch which assists

the patriarch and the synod of bishops in dealing with matters of major importance (c. 140). The patriarchal assembly is the greatest manifestation of the unity and communion of the entire patriarchal Church in which the bishops, other hierarchs and the representatives of the clergy, religious and laity participate (c. 143). Besides the patriarch, the synod of bishops has the right to determine the subjects to be discussed in the patriarchal assembly (c. 144). The synod of bishops also approves the statutes of the patriarchal assembly which contains the norms for the convocation, organization, membership, etc. (c. 145).¹⁴

9. The Power of Synod of Bishops outside the Territory

As we have already seen in detail, the legislative, judicial, electoral and administrative powers of the synod are practically limited within the territorial boundaries of each Church. However, liturgical laws enacted by the synod have the force of law everywhere in the world (c. 150 § 2). The synod of bishops can also elect at least three candidates for episcopacy outside the territory and can propose them to the Roman Pontiff through the patriarch for appointment (c. 149).

According to canon 146 § 2, in case of doubt about the territorial boundaries of a Church or if it is question of the modification of its boundaries, it is for the synod of bishops: a) to investigate the matter; b) to hear the opinion of the superior administrative authority of each Church sui iuris concerned; c) to discuss the various aspects of the problem; and d) to present a suitably documented petition for the resolution of the doubt or for the modification of the boundaries to the Roman Pontiff.

With the consent of the Apostolic See, the patriarch or major archbishop can seek appropriate information concerning the Christian faithful who reside outside the

¹⁴ For more about the patriarchal assembly see the sixth chapter of this book.

See Chapter 3, heading n. 1.5. "The Legislative Power of the Synod of Bishops outside the Territory"; heading n. 2.5. "The Judicial Power of the Synod outside the Territory" and heading n. 4.8. "The Appointment of Bishops outside the Territory of a Church".

territorial boundaries of the same Church even through a visitor (c. 148 § 1). The report of the visitor, submitted to the patriarch, is to be discussed in the synod of bishops, and on the basis of these discussions the patriarch can propose to the Apostolic See opportune means for the protection and enhancement of the spiritual good of the Christian faithful of the Church over which he presides, even through the erection of parishes and exarchies or eparchies of their own (c. 148 § 3).

10. Eparchies and Eparchial Bishops

The synod of bishops determines the manner of submitting the quinquennial report on the state of the eparchy to the patriarch by the eparchial bishops within the territorial boundaries of a patriarchal Church (c. 206 § 1). An eparchial bishop who has completed his seventy-fifth year of age, or who due to ill health or some other grave reason has become unsuited to fulfill his office, is requested to offer his resignation (c. 210 § 1). If such a bishop has not resigned, the synod of bishops can demand his resignation (cf. c. 210 § 3). The synod of bishops has to see that suitable and worthy support is provided for eparchial bishops *emeriti*, bearing in mind the primary obligation which falls on the eparchy which he served (c. 211 § 2). With regard to the quinquennial report and resignation of bishops the synod has no powers outside the territory.

11. Particular Programme for the Training of Clerics

It is the proper right and obligation of each Church to train clerics and other ministers especially through the establishment and operation of seminaries (c. 328). The synod of bishops can set up a particular programme for the training of clerics, in which the common law must be set forth in a more detailed manner for seminaries located within the territorial boundaries of its own Church (c. 330 § 1). Faithfully observing the common law and the tradition of its own Church sui iuris, the programme for the formation of clerics is to include more specific norms regarding the personal, spiritual, doctrinal and pastoral formation of students as well as individual disciplines to be taught and the ordering of courses

and examinations.¹⁶ This canon is in agreement with *Optatum totius*, which demands a particular programme of priestly training for each nation or rite (OT n. 1). As the canon explicitly states, the particular programme formulated by the synod is not applicable for the formation of clerics of the same Church outside its territory.

12. Election of a Religious to an Office

Normally, without the written consent of the major superior, a religious cannot be promoted after first vows to dignities or offices outside the institute. But the synod of bishops can elect such a person to such offices as patriarch, bishop, exarch, etc. After having fulfilled the function, the religious must return to the monastery, order or congregation (c. 431 § 1).

13. Evangelization

The Church is by its very nature missionary; therefore each Church *sui iuris* has the right and obligation to preach the Gospel to the whole world under the guidance of the Roman Pontiff.¹⁷ The synod of bishops has to establish a commission to foster more effective cooperation among all the eparchies in the missionary activity of the Church (c. 585 § 2). The synod of bishops as the supreme authority of a Church has the ultimate responsibility regarding evangelization.

14. The Magisterium of the Synod of Bishops

The synod of bishops, according to the Code, has no infallible teaching authority, but the bishops gathered in a synod are authentic teachers and instructors of the faith for the Christian faithful entrusted to their care. The faithful have to adhere to such authentic teaching of the synod with religious obsequium of soul (c. 600). Furthermore, the synod

¹⁶ C. 330 § 3; See Nuntia 8 (1979) 70-71; Nuntia 20 (1985) 70-71.

^{17 &}quot;Singularum Ecclesiarum sui iuris est iugiter curare, ut per praecones apte praeparatos et ab auctoritate competenti ad normam iuris communis missos Evangelium praedicetur in universum mundum sub moderamine Romani Pontificis". CCEO c. 585 § 1.

of bishops has the responsibility to promote, guard and defend the integrity and unity of faith and good morals, even disapproving if need be, opinions that are contrary to them or warning about those things that can endanger the faith and morals (c. 605).

15. Catechetical Formation

The proper catechetical formation of the faithful is the common responsibility of the whole Church sui iuris. Catechism is the sharing or the handing over of the faith experience of a Church sui iuris to younger generations according to its own liturgical, theological and spiritual patrimony. The parents (c. 618), parish community and its pastor (cc. 619, 624, 289), associations and movements (c. 620), eparchial bishop (cc. 623 & 196) and, above all, the synod of bishops (c. 621) have the grave obligation to give proper catechism to the faithful.¹⁸ It is the competence of the synod of bishops of each Church sui iuris to enact norms on catechetical formation, arranged in a Catechetical Directory. observing what has been prescribed by the supreme authority of the Church and taking into account the special character of Oriental Churches, so that the biblical and liturgical dimensions as well as the traditions of the respective Church sui iuris in patrology, hagiography and iconography are highlighted in the imparting of catechesis. 19 The synod of bishops also has the obligation to see that catechisms adapted to the various groups of faithful are prepared along with aids and resources, and that the different catechetical initiatives are promoted and co-ordinated among themselves (c. 621 § 3). Though not specified, it is clear that the institution of the catechetical commission for the whole Church sui iuris

The canons on catechetical formation are based on Pope John Paul II's apostolic exhortation "Catechesi Tradendae" AAS 71 (1979) 1277-1340 & "Directorium Catecheticum Generale", published by the Congregation for the Clergy, AAS 64 (1972) 97-176.

¹⁹ CCEO c. 621. Originally this canon did not include the ecclesial, liturgical or patrological dimension of catechism, but later it was unanimously accepted. Cf. Nuntia 11 (1980) 60; Nuntia 12 (1981) 22; Nuntia 17 (1983) 31.

is the responsibility of the synod of bishops (c. 622). The norms for catechetical formation enacted by the synod are normally not applicable in the parishes and eparchies outside its delimited territory.

16. Instruments of Social Communication

The Church uses apt means of communication in the fulfillment of the task of announcing the Gospel. The criterion with which the Church evaluates the media is the spirit of the Gospel. For safeguarding the integrity of faith and morals, the eparchial bishops in their eparchies and the synod of bishops in the whole Church sui iuris can forbid the Christian faithful to use or to pass on to other means of social communication to the extent that these are detrimental to that same integrity (c. 657 § 2). The synod of bishops can formulate a list of censors for the censorship of books. It can also set up a special commission of censors for consultation in this matter (c. 664 § 1).

17. Divine Worship

In case of serious necessity, in the judgment of the synod of bishops, Catholic ministers licitly administer the sacraments of penance, Eucharist and anointing of the sick to any Christian who cannot approach the ministers of their own ecclesial communities and who request them on their own, provided they manifest a faith consonant with that of the Catholic Church concerning these sacraments and are rightly disposed (c. 671 § 3). It is the competence of the synod of bishops to regulate every aspect of communicatio in sacris by enacting particular law consonant with the common law after consulting the competent authority of the non-Catholic Church or ecclesial community concerned (c. 671 § 5). Normally it is the priest who distributes the Divine Eucharist. but the particular law can allow the deacon to do the same (c. $709 \S 1$). The synod of bishops is free to establish other suitable norms according to which other Christian faithful, too, may distribute the Divine Eucharist (c. 709 § 2). According to common law, diaconal ordination can be conferred on a person who has successfully completed the fourth year of a curriculum of philosophical theological studies. But the synod of bishops can demand more studies or shorten the period (c. 760 § 1). In addition to the matters explicitly mentioned in the Code, the synod of bishops as the highest authority of a Church is ultimately responsible for the celebration of the divine liturgy and other sacraments in accordance with the spirit of common Oriental heritage and the genuine traditions of each Church.

18. Alienation of Property

With regard to the alienation of property the synod of bishops determines the minimum and maximum value of ecclesiastical goods that can be alienated in eparchies (c. 1036 § 1) and in patriarchal or major archiepiscopal Churches (c. 1036 § 2).

19. Reservation of the Remission of Penalty

The Roman Pontiff can reserve to himself or to others the remitting of any penalty. Without prejudice to this right of the Roman Pontiff, the synod of bishops can, in grave circumstances, enact laws and reserve the remission of penalties to the patriarch or major archbishop, with respect to their subjects who have a domicile or quasi-domicile within the territorial boundaries of the Church over which they preside (c. 1423 § 1).

B. THE CONSENT OF THE SYNOD OF BISHOPS

The patriarch requires the consent of the synod of bishops for many of his actions to be valid. According to the Code, when law determines that in order to perform a juridical act, a superior requires the consent of a group of persons, the group must be validly convoked, 20 and for a juridical act to be valid, the consent of the absolute majority of those who are present is required. 21 Therefore, the act will be invalid if the

²⁰ For lawful convocation, see c. 948.

^{21 &}quot;Si iure statuitur ad actum iuridicum ponendum auctoritatem indigere consensu aut consilio alicuius personarum coetus, convocari debet coetus ad normam can. 948, nisi aliter iure particulari cavetur pro casibus ab eodem iure statuitis, in quibus de consilio tantum exquirendo agitur; ut autem actus iuridicus valeat requiritur, ut

superior did not seek the consent or if he acted contrary to the consent.

The patriarch or major archbishop has to convoke the synod of bishops and obtain its consent with a vote of absolute majority for those actions for which the law prescribes that the consent of synod of bishops is required. Otherwise such acts would be invalid. The difference between a synodal act and an action taken place with the consent of the synod is that in the first case the synod itself is acting; in the second case the patriarch is acting. Therefore, an action with the consent of the synod is not a proper synodal act, but an act of the patriarch. Similarly, the consent of the synod of bishops, once given, does not oblige the patriarch to perform the act; he can subsequently decide not to act or to delay the action. In the following sections we review all the acts for which the synod of bishops can give its decisive vote by way of consent.

1. Transfer of Patriarchal See

The new Code requires that a patriarchal Church must have a permanent See for the residence of the patriarch within its own territory, if possible in the principal city from which the patriarch takes his title. This See can be transferred only with the consent of the synod of bishops, and for a grave reason. After obtaining the consent of the synod, the assent of the Roman Pontiff is also necessary for such an action (c. 57 § 3). It is interesting to note that at present, none of the Eastern Catholic patriarchs resides in the city from which he holds the title.²²

obtineatur consensus partis absolute maioris eorum, qui sunt praesentes, aut omnium exquiratur consilium, firma § 2, n. 3". C. 934 § 1.

The Maronite and Syrian patriarchs of Antioch and the Armenian patriarch of Cilicia reside in Beirut (Lebanon); the Melkite patriarch of Antioch resides in Demascus (Syria); and the Chaldean patriarch bears the title of Babylon, but resides in Bagdad (Iraq); the Coptic patriarch has the title of Alexandria but resides in Cairo, Egypt. Annuario Pontificio 1997, 3-7; Cf. J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, 220

2. Matters Concerning Provinces and Eparchies

According to canon 85 § 1, for a serious reason with the consent of the synod of bishops and having consulted the Apostolic See, the patriarch can do the following administrative acts:

- a. Erection of provinces or eparchies:
- b. Modification of the boundaries of provinces or eparchies;
- d. Unification of provinces or eparchies;
- e. Suppression of provinces or eparchies;
- f. Modification of their hierarchical rank;
- g. Transfer of eparchial sees.

3. Coadjutor or Auxiliary Bishop

If the pastoral needs of the eparchy warrant it, the eparchial bishop has the right to request an auxiliary bishop (c. 212 § 1). With the consent of the synod of bishops, the patriarch or major archbishop can assign an auxiliary to an eparchial bishop observing the canons 181 § 1 and 182-187 on the appointment of bishops.²³ In more serious circumstances, even of a pastoral nature, with the consent of the synod of bishops a co-adjuctor bishop can be appointed in the same manner (c. 85 § 2 and c. 212 § 2). In the case of a co-adjuctor bishop, who is to be granted all the rights and obligations of an eparchial bishop, again the consent of the synod of bishops is required (c. 213 § 2).

4. Transfer of Metropolitans and Bishops

According to canon 85 § 1 number 2, for a grave reason with the consent of the synod of bishops, the patriarch can:

- a. Transfer a metropolitan to another metropolitan See;
- b. Transfer an eparchial bishop to another eparchial See;

^{23 &}quot;Patriarchae de consensu Synodi Episcoporum Ecclesiae patriarchalis competit: n. 1. Episcopo eparchiali Episcoporum coadiutorem vel Episcopum auxiliarem dare servatis cann. 181, § 1, 182-187 et 212". CCEO c. 85 § 2.

c. Transfer a titular bishop to another titular See.

In practice the patriarch or major archbishop can make such a transfer only if the bishop or the metropolitan who is involved consents to it. If they refuse, the synod of bishops itself is to resolve the matter. If the synod fails, the matter can be referred to the Roman Pontiff.²⁴ The bishop has also the right of appeal to the Roman Pontiff, since he is the supreme judge for the entire Catholic world (c. 1059 § 1).

5. Agreements with Civil Authority

With the consent of the synod of bishops and the prior assent of the Roman Pontiff, the patriarch can enter into agreements with civil authority which are not contrary to the law established by the Apostolic See (c. 98). However the patriarch cannot put these agreements into effect without having obtained the approval of the Roman Pontiff.

6. Concerning the Synod Itself

The patriarch or major archbishop who opens the synod of bishops can transfer, postpone, suspend and dissolve it only with the consent of the same synod of bishops (c. 108 § 1).

7. Removal of the Patriarchal Financial Administrator

The patriarchal financial administrator is appointed by the patriarch with the consent of the permanent synod for the administration of the goods of the patriarchal Church. He is appointed for a term determined by particular law. The patriarch can remove him from office during the tenure in normal cases only with the consent of synod of bishops, but if there is danger in delay, with the consent of the permanent synod (c. 122 §§ 1, 2).

^{24 &}quot;Patriarchae de consensu Synodi Episcoporum Ecclesiae patriarchalis competit: n. 2, gravi de causa Metropolitam vel Episcopum eparchialem aut titularem ad aliam sedem metropolitanam, eparchialem, vel titularem transferre; si quis renuit, Synodus Episcoporum Ecclesiae patriarchalis rem dirimat vel Romanum Pontificem deferat". CCEO c. 85 § 2.

8. Patriarchal Assembly

The patriarchal assembly is normally convoked at least every five years, but it can also be convoked whenever the patriarch with the consent of the permanent synod or synod of bishops considers it useful (c. 141).

9. Provision for Resigned Bishops

An eparchial bishop, whose resignation from office has been accepted, can continue to have a residence in the same eparchy. The patriarch with the consent of synod of bishops can make other provisions in special circumstances (c. 211 § 1).

10. Exarchate and the Exarch

The patriarch can establish, modify or suppress exarchies within the territorial boundaries of a patriarchal Church with the consent of the permanent synod (c. 85 § 3; 311 § 2). An exarch is appointed by the patriarch after consulting the permanent synod, but the patriarch can remove him from office only with the consent of the synod of bishops (c. 314 § 2). If an exarch is to be promoted to episcopal ordination, then he must be elected according to the norms of the election of bishops stipulated in canons 181-188 (c. 314 § 1).

11. Establishment of a Common Seminary

A common seminary can be established for several eparchies by the eparchial bishops of those same eparchies or by the patriarch with the consent of the synod of bishops (c. 334 § 1).

12. Removal from Clerical State

The patriarch or major archbishop with the consent of the synod of bishops can grant the removal of the clerical state to clerics under two conditions: a) the cleric has a domicile or quasi-domicile within the territorial boundaries of his own Church; b) he is not bound by the obligation of clerical celibacy, or if bound, is not petitioning a dispensation from this obligation (c. 397). Dispensation from celibacy is reserved to the Roman Pontiff.

13. Suppression of a Monastic Confederation

A confederation within the territorial boundaries of a patriarchal Church can be suppressed only by the patriarch with the consent of the synod of bishops after consultation with the eparchial bishops who have an interest; and of the president of the confederation, without prejudice to suspensive recourse to the Roman Pontiff (c. 440 § 2).

14. Establishment of Catholic Universities and Ecclesiastical Faculties

Within the territorial boundaries of a patriarchal Church, the patriarch with the consent of the synod of bishops can erect a Catholic university or can approve as a Catholic university an institute already erected, but he can do so only after previous consultation with the Apostolic See (c. 642 § 1-2). Ecclesiastical universities and faculties are those that have been canonically erected or approved by competent ecclesiastical authority, that cultivate and teach the sacred sciences and related subjects, and that have the right to confer academic degrees with canonical effects (c. 648). Such ecclesiastical faculties also can be erected or approved by the patriarch together with the Apostolic See having obtained the consent of the synod of bishops (cc. 648-649).

15. Approbation of Liturgical Books

The patriarch can approve liturgical books with the consent of the synod of bishops, after a prior review of the Apostolic See.²⁵ The same authority is also competent to approve translations of these books meant for liturgical use after sending a report to the Apostolic See (c. 657 § 2). In

^{25 &}quot;Textuum liturgicorum approbatio praevia Sedis Apostolicae recognitione reservatur in Ecclesiis patriarchalibus Patriarchae de consensu Synodi Episcoporum Ecclesiae patriarchalis". CCEO c. 657 § 1.

addition, the competent authority for the regulation of the whole divine public worship is the patriarch with the consent of the synod (c. 668 § 2).

16. Reservation of Sins

In some cases in order to provide for the salvation of souls, the faculty to absolve from sins can be restricted and can be reserved to a determined authority with the consent of the synod of bishops (c. 727).

17. Reception of non-Catholics Coming to Full Communion

A bishop of an Eastern non-Catholic Church coming to full communion can be received into the Catholic Church by the patriarch with the consent of the synod of bishops. In a Metropolitan Church *sui iuris*, a bishop can be received by the metropolitan with the consent of the council of hierarchs (c. 898 § 1). According to *ius commune* the right of receiving other persons belongs to the hierarch of the place (c. 898 § 2). Individual lay persons can be received by the parish priest (c. 898 § 3).

18. Suppression of Juridical Persons

Juridical persons that have been constituted or approved by the patriarch can be suppressed by him, having consulted the permanent synod. With the consent of the synod of bishops the patriarch can suppress any juridical person except those that have been set up or approved by the Apostolic See. But if the norm of suppression is mentioned in common law, this norm should be followed (c. 928 n. 1).

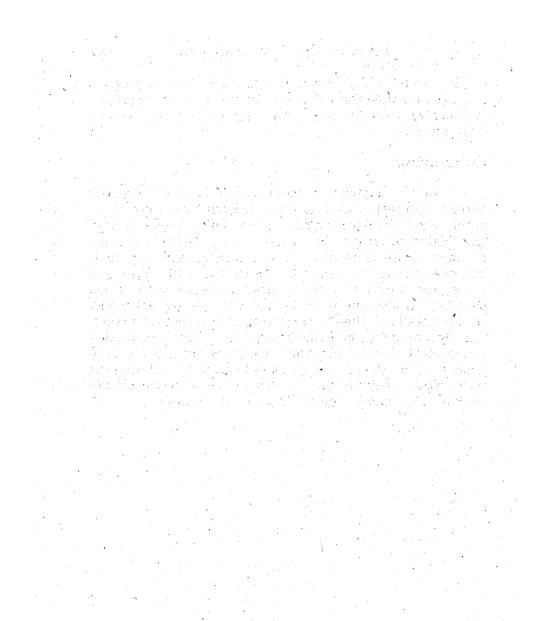
19. Alienation of Temporal Goods

For the alienation of property in a patriarchal or major archiepiscopal Church, if the value of goods is more than double the maximum amount fixed by the synod of bishops, or in case of precious goods or of goods donated to the Church from a vow, the patriarch needs the consent of the same synod (c. 1036 § 3). Similarly, to alienate the temporal goods of the patriarchal Church or of the patriarchal eparchy, the consent

of the synod of bishops is needed if the value of goods is more than double the value or if the case involves precious goods or those things given to the Church by reason of vow (c. 1037 § n. 3).

Conclusion

In this chapter, we summarized the minor synodal acts and all other instances where the patriarch needs the consent of the synod of bishops for the validity of his actions. Though administrative acts are in principle reserved to the patriarch or major archbishop in the new Code, the patriarch or major archbishop is not completely free to act as he wills. For many of the administrative acts he needs the consent of the synod of bishops or the consent or counsel of the permanent synod. In short, the basic theological principles of synodal structure, namely communion and collegiality find authentic expression in the new Oriental legislation. The patriarch is not a small pope, but the head of the synod of bishops of a Church *sui iuris*, who collegially coordinates the activities of all the bishops of the same Church for the common good.



Section Two

OTHER LOCAL EPISCOPAL BODIES OF THE EAST

Chapter Five

THE COUNCIL OF HIERARCHS OF A METROPOLITAN CHURCH SUI IURIS

The new Eastern Code envisages three established and well-determined forms of Churches sui iuris: patriarchal Churches (cc. 55-150), major archiepiscopal Churches (cc. 151-154) and metropolitan Churches (cc. 155-173). Besides these three established forms, there are other Churches sui iuris which immediately depend upon the Apostolic See (cc. 174-176). As we have seen, the episcopal body of a patriarchal or major archiepiscopal Church is the synod of bishops, while that of a metropolitan Church sui iuris is called council of hierarchs. In this chapter we outline the structure, organization and powers of the council of hierarchs of metropolitan Churches sui iuris in comparison with the synod of a patriarchal or major archiepiscopal Church.

1. The Metropolitan Churches Sui Iuris and TheirSynods according to "Sacred Canons"

In the early Church the bishops were always aware that they together formed a community or college just as the apostolic college. On the basis of this collegial consciousness and after the model of the apostolic synod of Jerusalem, collegial structures and synodal convocations spurred up spontaneously in the early Church, especially when the Church was confronted with serious problems that could not be resolved by a single eparchial bishop. Therefore, the bishops of a region assembled together, normally under the leadership of the bishop of the metropolitan city, resolved the problems in a collegial manner and promulgated norms for common action. Synods became the lifestyle of the Church, both in the Occident and in the Orient by the second century.

Thus, even before the Council of Nicaea (325), the local Churches were grouped into provinces, and synods were held. The bishop of the metropolitan city, normally considered the head of the province, convoked and presided over the synods and established relationships with the bishops of other metropolitan cities. From the very beginning of Christianity, synods were understood as an expression of the communion and collegiality of bishops, and a service of unity for the Church; questions of faith and discipline were resolved by these synods. The ecumenical councils and other general synods of the East acknowledged and approved the metropolitan system and the synodal government of the Churches.²

1.1. The Metropolitan Synod

The metropolitan synod was the assembly of the bishops of a region, at certain clearly determined periods of the year under the presidency of the metropolitan, who is the primatial head of the province.³ Each bishop had the right and obligation to participate personally in the metropolitan synod and to exercise his power for the common good of the whole region. The unity of the head with the assembly, the solicitude of all for everyone and everyone for all, and the unanimity in synodal decisions manifested the profound reality of episcopal collegiality on the regional level. The metropolitan synod, in the strict sense, was well established and formally organized by the fourth century.

The metropolitan synods enacted and promulgated laws for the whole region without any intervention from a higher authority; adjudicated contentious and criminal cases of all the Christian faithful including bishops; elected and consecrated bishops for the region; and enjoyed wide

¹ Cf. E. LANNE, "Églises locales et patriarcats", 294-295; H. M. BIEDERMANN, "Die Synodalität", 298; C. VOGEL, "Unité de l'Église et pluralité", 601-616.

² For detailed study, see the first chapter of this book; also P. PALLATH, The Synod of Bishops of Catholic Oriental Churches, 82-121.

³ Cf. C. HEFELE, Histoire des conciles I, 1, 6; P. P. JOANNOU, "Pape, concile et patriarches", 503; L. WALDMULLER, "Das Konzil im Verständnis der Ostkirche", 142-144; J. HAJJAR, "La collegialità episcopale nella tradizione orientale", 819; B. KURTSCHEID, Historia iuris canonici, 145-146; R. METZ, "L'institution synodale", 163 & 167.

administrative powers.⁴ In short, in the early Church before the emergence of the patriarchates, only metropolitan *sui iuris* Churches existed; and the metropolitan synod exercised legislative, judicial and administrative functions and regulated the whole ecclesial life within the boundaries of its territory. The competence of the metropolitan synod was limited only by the legislative and doctrinal decrees of the ecumenical councils.

1.2. The Juridical Figure of Metropolitan

As the civil administrative unit became also the ecclesiastical administrative unit. the bishop of the metropolis. who emerged as the head of the whole province, began to be known as the metropolitan. 5 Many canons which deal with the synodal system also emphasize the importance and role of the metropolitan for the proper functioning of the synod. According to the thirty-fourth Apostolic canon, the bishops of every province or nation must acknowledge him who is first and consider him as head. Canons four, five and six of the first Ecumenical Council of Nicaea (325) officially confirmed the then existing metropolitan system of the Church. The ninth canon of Antioch repeats the idea of Apostolic Canon thirty-four and specifies that the "head" spoken of in the apostolic canon is the bishop who presides in the metropolis. namely the metropolitan, and he has precedence in rank. Later, subsequent ecumenical councils, such as Constantinople I (c. 2), Council of Chalcedon (c. 19), the quinisext Council in Trullo (c. 39) and the Council of Nicaea II (cc. 3 & 6) confirmed the prerogatives of the metropolitan.

⁴ For more detailed analysis and study, see the first chapter of this book; also P. PALLATH, *The Synod of Bishops of Catholic Oriental Churches*, 82-121.

⁵ Cf. C. HEFELE, Histoire des conciles I, 1, 540-542; J. MEYENDORFF, "Ecclesiastical Organization", 7; Orthodoxie et catholicité, 28-29; P. L'HUILLIER, "Collégialité et primauté", 332-333; V. PARLATO, L'ufficio patriarcale, 10; V. PHIDAS, "Primus Inter Pares", 181-182; D. PAPANDREOU, "Die Stellung des Ersten" 13; J. HAJJAR, "La collegialità episcopale nella tradizione orientale", 819; B. KURTSCHEID, Historia iuris canonici, 41-42; F. DVORNIK, The Idea of Apostolicity in Byzantium, 5-6; H. GROTZ, Die Hauptkirchen des Ostens, 89.

The metropolitan had a special role in the synodal election and the consecration of the bishops of his province. It was his right to confirm the proceedings (Nicaea L. c. 4: Nicaea II, c. 3). According to the Antiochian Council, a bishop shall not be ordained without a synod and the presence of the metropolitan of the province. The metropolitan has to convoke the synod of election by an official letter (Antioch c. 19). It is impossible to make someone a bishop without the consent of the metropolitan (Nicaea I. c. 6). The Council of Chalcedon. which reserved the right to ordain the metropolitans of Pontus. Asia and Thrace to Constantinople, confirmed that "each metropolitan of the aforesaid dioceses along with the bishops of the province ordain the bishops of the province" (c. 28). In short, for the election of a bishop in a province, the metropolitan was obligated to convene all the bishops of the province, to preside over the synod, to supervise the faithful observance of the traditions and canonical discipline of the Church and finally together with other bishops of the province to consecrate the newly elected bishop.6

Just as in the synods of election, it is clear that the metropolitan played an important role in the general synods of the province. The metropolitan convoked the synods, determined the place of its meeting and ensured its proper functioning in accordance with the tradition and discipline of the Church. He presided over the synodal proceedings and promulgated the synodal decisions in the name of all the bishops of the province. The responsibility of the metropolitan regarding the convocation of synods is very clear in canon 6 of Nicaea II which prescribed canonical penalties for a metropolitan who neglects to convoke the synod at least once a year. In short, the metropolitan's guidance unquestionably

⁶ Cf. F. X, WERNZ & P. VIDAL, Ius Canonicum II, 548; D. SALACHAS, "Il principio della struttura sinodale", 233; E. EID, La figure juridique du patriarche, 40; M. J. LE GUILLOU, "L'expérience orientale de la collégialité épiscopale", 170; I. ORTIZ DE URBINA, Nicée et Consantinople, 100.

⁷ Cf. Apostolic Canons 37; Nicaea I c. 5; Chalcedon c. 19; Antioch c. 20; Trullo c. 8; Carthage (419) c. 76.

⁸ Cf. R. POPTODOROV, "Protos and Conciliarity", 210.

maintained the agreement, harmony and unanimity among the bishops of the region.9

Our analysis clearly shows that before the gradual emergence of the patriarchates of Rome, Alexandria, Antioch, Jerusalem, Constantinople, Chaldea and Armenia, only the metropolitan Churches sui iuris existed. These great Sees, too, once existed as metropolitan Churches sui iuris and only later evolved into patriarchates with supra-metropolitan prerogatives because of their special relation to an apostle or because of being mother Churches or because of the sociocultural and political importance of their cities. Therefore, the metropolitan Church sui iuris is the most ancient and most original form of Eastern Church organization. Even after the emergence of the patriarchates and the consequent grouping of several metropolitans of a region under the same patriarch, on the basis of the principle of subsidiarity to which the Eastern Churches always adhered even if without explicit reference to it,10 the metropolitans and the provincial synods retained much of their legislative, judicial and electoral powers. The metropolitan Churches outside the territorial boundaries of the great patriarchates functioned as before according to the "sacred canons".

2. The Metropolitan Church and Its Episcopal Body according to CS

Though the title De Ecclesiis metropolitanis ceterisque Ecclesii sui iuris is an innovation of the new Code, it is clear that the special figure or the juridical status of the metropolitan Churches sui iuris find their basis in canons 315, 317, 320, 322 and 346 of Cleri sanctitati. ¹¹ These canons envisage the juridical figure of a metropolitan who is outside the territory of a patriarchal or archiepiscopal Church and not subject to a patriarch or archbishop, but directly depends upon the Roman Pontiff. Such a metropolitan heads a

⁹ J. HAJJAR, "The Synod in the Eastern Church", 31.

¹⁰ Cf. Nuntia 3 (1976) 21.

¹¹ Cf. Nuntia 19 (1984) 13-14.

province, and this dignity is united to an episcopal see by decree or recognition of the Roman Pontiff or an ecumenical council (c. 315). These metropolitans have special powers, prerogatives, rights and obligations which the metropolitans within the territory of a patriarchal or archiepiscopal Church do not enjoy.¹²

According to Cleri Sanctitati canon 340, the episcopal body that assisted the metropolitan outside a patriarchal or archiepiscopal Church in the government of the Church is the provincial synod. The provincial synod is the assembly of the bishops and other hierarchs of an ecclesiastical province who are constituted outside the territory of a patriarchate or archiepiscopate. 13 Such a synod is convoked and presided over by a metropolitan who is not subject to a patriarch or archbishop. The provincial synod is to be held as often as the metropolitan with the consent of the bishops of the province deems it necessary and at least every twenty years (c. 344). The membership, obligation to attend the synod, the necessary quorum, the manner of the promulgation of decrees and other procedural matters are regulated by common law (CS cc. 341-350). The metropolitan who is not subject to a patriarch or archbishop also has to call the local hierarchs to the seat of the metropolitan whenever necessary in order to decide in mutual consultation what is to be undertaken in the eparchies to promote the welfare of religion, and together they shall prepare the material to be acted upon by the future provincial synod (c. 351). Therefore, in CS itself we find the figure of a metropolitan who is not subject to a patriarch or archbishop and an episcopal body, namely the provincial synod for the collegial management of the affairs of the province under the supreme authority of the Church.

¹² CS cc. 320; 321; 340; etc.

[&]quot;Episcopi ceterique Hierarchae provinciae ecclesiasticae extra patriarchatus et archiepiscopatus constituti, conveniunt in Synodum provincialem. Hanc Synodum Metropolita Patriarchae vel Archiepiscopo non subiectus convocat, locum eiusmet celebrationis, auditis omnibus qui assistere debent cum suffragio deliberativo, intra provinciae territorium, designat, eique praeest". C. 340 § 2.

3. The Evolution of the Juridical Figure of Metropolitan Church *Sui Iuris* in the New Code

The Second Vatican Council declared the equality of all the Churches of Catholic communion (OE 3), recognized the right and duty of every Church to govern itself according to its own special discipline (OE 5), established the right of every Church to grow and develop preserving its patrimony and identity (OE 4) and committed many important matters to the episcopal bodies of these Churches.¹⁴ Therefore, the Code Commission was compelled to find suitable models for small Churches that came into full communion with Catholic Church,15 in addition to the patriarchal and major archiepiscopal Churches. Thus emerged the metropolitan Churches sui iuris of the new Code. According to the Commission the chapter De ecclesiis metropolitanis sui iuris is rather new because it deals with the special figure of a Church sui iuris. The metropolitan of such a Church sui iuris has super-episcopal powers but he lacks super-metropolitan power which by law belongs to the patriarch or major archbishop. These metropolitans are immediately subject to the Roman Pontiff. 16 We find the description of a metropolitan figure in the 1984 Schema Canonum de Constitutione. Hierarchica, according to which such metropolitans are constituted in ecclesiastical provinces; they are immediately subject to the Roman Pontiff and are not attached to any of the patriarchal or major archiepiscopal Churches according to the norm of law.17

¹⁴ For matters committed to each Church, OE 17, 20, 23.

The Ethiopian, Syro-Malankara, Albanian, Byelorussian, Bulgarian, Greek or Hellenic, Italo-Albanian, Romanian, Ruthenian, Slovakian, Hungarian, Russian, and Yugoslavian Churches are examples. At present the Ethiopian, Syro-Malankara, Romanian and Rutheninan Churches are considered metropolitan Churches sui iuris, and others belong to the "other Churches sui iuris".

¹⁶ Nuntia (1984) 14; such a metropolitan figure does not seem to be much different from that of CS as we have seen above.

^{17 1984} Schema c. 131 § 1. In canonibus huius sectionis de iis tantummodo Metropolitis agitur qui ecclesiasticis provinciis, immediate nonnisi auctoritati Romani Pontificis subiectis praeficiuntur et nulli Ecclesiae patriarchali vel archiepiscopali maiori ad normam iuris aggregati sunt.

Later according to the proposal of Coetus de coordinatione, the study group re-examined profoundly Titulus V and formulated the canon in a positive manner without referring to the patriarchal and major archiepiscopal Churches but by describing clearly the juridical figure of a metropolitan Church sui iuris and the nature of the superepiscopal power of the metropolitan who presides over such a Church. 18 The Study Group concluded that such Churches cannot be considered ecclesiasticae provinciae, because "province" is a technical term to designate the provinces of a patriarchal or major archiepiscopal Church but not of an Ecclesia sui iuris. It was also decided to state in the canon itself that the metropolitans of these Churches are not elected but appointed by the Roman Pontiff, by which they receive super-episcopal power which is limited intra fines territorii of the same Church. On the basis of these new decisions the canon was reformulated and inserted into the new Code without any substantial change.19

According to the new Code, a metropolitan Church sui iuris can be described as a group of Christian faithful united by a hierarchy headed by a metropolitan of a determined see who is appointed by the Roman Pontiff and who has power over all bishops and the Christian faithful of the Church over which he presides according to the norm of law, and which is recognized as sui iuris by the supreme authority of the Church.²⁰ The main difference between the metropolitan of a Church sui iuris and the metropolitan of a patriarchal or major archiepiscopal Church is that the former is the head of a Church sui iuris immediately subject to the

^{§ 2.} Unius supremae Ecclesiae Auctoritatis est provincias de quibus in § 1 constituere, supprimere aut innovare. *Nuntia* 19 (1984) 48, c. 131.

¹⁸ Nuntia 22 (1986) 114.

The canon was reformulated as follows: c. 131 § 1. Ecclesiae metropolitanae sui iuris praeest Metropolita sedis determinatae, a Romano Pontifice nominatus, a Consilio Hierarcharum ad normam iuris adiutus. § 2. Solius supremae Ecclesiae auctoritatis est Ecclesias metropolitanas sui iuris constituere, erigere, immutare ac supprimere, earumque territorium certis finibus circumscribere. Nuntia 22 (1986) 115.

²⁰ Cf. CCEO cc. 27; 155 & 157 § 1.

supreme authority of the Church, while the latter is the head of a province of a patriarchal or major archiepiscopal Church and exercises his power under the authority of a patriarch or major archbishop. According to some authors, it is the Roman Pontiff who exercises patriarchal authority on behalf of the metropolitan Churches *sui iuris*.²¹

An autonomous metropolitan Church is presided over by a single metropolitan. Therefore a Church which has more than one metropolitan province cannot conform to the metropolitan Church sui iuris envisioned by the Code. Therefore some of the existing metropolitan Churches sui iuris would be elevated to the status of the major archiepiscopal or patriarchal Churches when the longed-for unity becomes a reality and non-Catholic metropolitans with their suffragans come into full communion with the Catholic Church.²²

The establishment, modification, suppression and determination of the territorial boundaries of the metropolitan Churches sui iuris are reserved to the supreme authority of the Church, that is, to the ecumenical council or the pope (c. 155 § 2). Hence no Church can receive the status of a metropolitan Church sui iuris except through an act of the supreme authority of the Church. Similarly only the supreme authority is competent to determine or extend the territorial boundaries of a Church. In the event of ecumenism as we indicated above or considering the growth and maturity, a metropolitan Church sui iuris can be elevated to the status of a major archiepiscopal Church, or an other Church sui iuris (cc. 174-176) can be established as a metropolitan Church sui iuris by the supreme authority of the Church.

4. Council of Hierarchs in the New Code

The episcopal body of a metropolitan Church sui iuris is determined by the Code Commission as the consilium

²¹ J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, 375; V. J. POSPISHIL, Eastern Catholic Church Law, New York 1993, 153.

According to common understanding at present there are four metropolitan Churches sui iuris: the Ethiopian Church, Romanian Church, Ruthenian Church and Syro-Malankara. Church (South India).

hierarcharum, in the manner of the bishops' conference of the Latin Church. This has been done precisely to fill a grave vacuum in the law created by Vatican II, which committed to the legislative authority of each individual Church the regulation of many important matters.²³ According to canon 155 § 1, a metropolitan Church sui iuris is headed by a metropolitan and assisted by a consilium hierarcharum.

The Code Commission seems to give no reason why the consilium hierarcharum was instituted in the manner a of bishops' conference instead of a metropolitan synod congruent with the Eastern tradition and "sacred canons". In fact, as we have seen above, the episcopal body which assisted the metropolitans who were not under the authority of a patriarch or archbishop was the synod even in CS. Though its powers are limited, the episcopal body of a province under a patriarch or major archbishop is called "metropolitan synod" in the new Code.²⁴ Thus it seems that the name consilium hierarcharum is intentionally used in the Code to indicate that it has no real synodal powers but functions in the manner of the bishops' conferences of the Latin Church. According to Faris, "more restricted in its deliberative authority and not sharing the place of superior instance of authority with the metropolitan in accordance with Orientalium Ecclesiarum number 9, the council of hierarchs functions in a manner closer to that of a bishops' conference".25 It seems that the "sacred canons" cannot be the source of such an institution as stipulated in the Guidelines for the revision26 or as wished by the Code Commission.

^{23 &}quot;Constitutio Consilii Hierarcharum sat similis proponitur quae 'Conferentiae episcopalis' in iure occidentalis Ecclesiae praescribitur, eiusdem Consilii vero competentia alio modo definitur in can. 139. Hoc canone grave vacuum iuris impletur, et norma in re urget, cum eam Auctoritatem, ad Ecclesias Metropolitanas sui iuris quod spectat, definit cui Concilium Vaticanum II, genericis verbis, plura negotia maioris momenti committit (OE n. 17, 20, 23) et ad quam alia loca schematum futuri Codicis referuntur". Nuntia 19 (1984) 14.

²⁴ CC. 133 § 1, n. 2; 137.

²⁵ J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, 376.

²⁶ Of Mintin 9 (1976) 19-19

The appellation consilium hierarcharum is inappropriate for the episcopal body of a metropolitan Church sui iuris. The primary meaning of consilium is deliberation. consultation, a considering together or counsel, namely the act of an individual or collegial body. Secondarily, it means the assembly of persons giving advice or counsel.27 In CCEO consilium is generally used for minor consultative bodies. such as consilium a rebus oeconomicis (c. 263), consilium presbyterale (cc. 264-270), consilium pastorale (cc. 272-275), etc. For decision-making bodies the name concilium or synodus is invariably used.²⁸ The episcopal body of a metropolitan Church sui iuris is not a consultative organ of the metropolitan but a decision-making body, though its competence is limited in comparison with the synod of a patriarchal or major archiepiscopal Church. Therefore, the appropriate appellation for the episcopal body of a metropolitan Church sui iuris would be synodus and not consilium.29

Similarly, the term *hierarcharum* seems to be inappropriate. According to canon 984, in addition to bishops, exarchs, apostolic administrators (not necessarily bishops) protosyncelli and syncelli, as well as major superiors in institutes of consecrated life who have ordinary power of governance are hierarchs. Such persons are not members of the *consilium hierarcharum* of a metropolitan Church *sui iuris*, but *omnes et soli Episcopi ordinati*. Therefore, the proper designation of this episcopal body would be "metropolitan synod" or *synodus episcoporum Ecclesiae metropolitanae sui iuris* is In case the episcopal body of a metropolitan Church *sui iuris* is

²⁷ LEWIS & SHORT, A Latin Dictionary, 432; SIMPSON, Cassel's Latin Dictionary, 140.

In CS the name Oecumenica Synodus was used for an ecumenical council (cc. 167-174), but the new Code adopts the expression Concilium Oecumenicum (cc. 49-54) as found in the Latin Code (cc. 336-341). The word synodus is used for the episcopal bodies of patriarchal and major archiepiscopal Churches, for provincial assemblies of bishops and also for the permanent synod.

²⁹ Cf. W. AYMANS, "Synodale Strukturen im Codex Canonum Ecclesiarum Orientalium", AKK 160 (1991) 369.

³⁰ Cf. W. AYMANS, "Synodale Strukturen im Codex Canonum Ecclesiarum Orientalium", 370.

called a "metropolitan synod", that of a province of a patriarchal or major archiepiscopal Church would be named a "provincial synod" according to the common tradition of the Church.

5. Structure and Organization of the Council of Hierarchs

5.1. Membership in the Council of Hierarchs (c. 164 §1)

Regarding membership in a council of hierarchs, canon 164 states:

- § 1. All and only the ordained bishops of the metropolitan Church *sui iuris* must be called to the council of hierarchs, no matter where they are constituted, except those mentioned in can. 953 § 1 or those who have been punished with the canonical penalties mentioned in cann. 1433 and 1434. Bishops of another Church *sui iuris* can be invited as guests only, if the majority of the members of the council of hierarchs agrees.
- 1. All and Only Ordained Bishops: the council of hierarchs of a metropolitan Church sui iuris consists of all and only ordained bishops, whether they are constituted outside or inside the territory of the metropolitan Church. Though the power of the metropolitan and the council of hierarchs can be validly exercised only within the territorial boundaries of the metropolitan Church sui iuris (c. 157 § 2), the bishops of the same Church constituted outside its territory (if any) are equally members of the council, and no restriction is put on them. As in the case of the synod of bishops, all ordained eparchial bishops and titular bishops (coadjutor, auxiliary or resigned bishops) are members of the council of hierarchs, while those who are canonically appointed by the Roman Pontiff but not ordained are excluded. By requiring that all the ordained bishops of the metropolitan Church be summoned to the council of hierarchs, the canon establishes this body as a manifestation of the unity and communion of the entire episcopate of the same metropolitan Church.31

³¹ Cf. J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, 387.

- 2. Exclusion of Ordained Bishops: in accordance with canons 953 § 1, 1433 and 1434 the following ordained bishops are excluded from the council of hierarchs: bishops who are incapable of human act; bishops who have publicly rejected the Catholic faith, publicly defected from communion with the Catholic Church or who are under the pain of major excommunication; as well as bishops who have been demoted to a lower order or deposed from office.
- 3. Bishops of Another Church Sui Iuris: in the synod of bishops of a patriarchal or major archiepiscopal Church there is no provision for the participation of the bishops of another Church sui iuris. But they can be invited to the meeting of the council of hierarchs of a metropolitan Church sui iuris as guests or observers, if the majority of the members of the council agrees. The canon is silent about the participation of bishops who were originally members of the metropolitan Church but have been ordained for the Apostolic See or for another Church sui iuris. It seems that they could participate at least as guests, if invited.
- 4. Non-Episcopal Participation: in the synod of a patriarchal or major archiepiscopal Church, non-episcopal hierarchs and experts can be invited to expedite certain matters. But no mention is made in the Code about the participation of non-episcopal experts in the council of hierarchs.

5.2. Deliberative Vote (c. 164 § 2)

According to canon 164 §2, "Eparchial bishops and coadjutor bishops have deliberative vote in the council of hierarchs; the other bishops of the metropolitan Church sui iuris can have this vote, if this is expressly established in particular law". The regulation of the canon concerning deliberative vote can be summarized as follows:

1. Eparchial Bishops and Coadjutor Bishops: in the council of hierarchs all the eparchial bishops and coadjutor bishops inside or outside the territory enjoy active vote and there is no provision for the restriction of the active vote of eparchial or coadjutor bishops constituted outside the territory as in a patriarchal or major archiepiscopal Church.

- 2. Auxiliary Bishops and Resigned Bishops: according to common law auxiliary bishops and retired bishops whether inside or outside the territory have no deliberative vote in the council. Hence they enjoy only a consultative vote. But the particular law of a metropolitan Church sui iuris can establish that auxiliary bishops and retired bishops also have a deliberative vote.
- 3. Status of Guests: as indicated above, bishops of other Churches *sui iuris* can be invited if the majority of the members of the council approves. If invited, they can participate only as observers even without a consultative vote. However they may be permitted to express their opinions to the members of the council

5.3. Obligation to Attend the Council of Hierarchs (c. 165)

All bishops who have the right to be convoked to the council have the corresponding obligation to attend, except those who have already resigned from office (c. 165 § 1). Thus resigned bishops have the right to be convoked to the council but have no obligation to attend. If a bishop considers himself to be legitimately impeded from the council, he has to submit a written explanation for his absence to the council of hierarchs. The bishops who are present in the designated place at the beginning of the sessions of the council and who have deliberative votes can decide the legitimacy of the impediment (c. 165 § 2). If the absence is declared unjustified, the bishop is to be counted among those obliged to attend, which could affect the necessary quorum. The bishops must be personally present for the council and nobody can send a proxy (c. 165 § 3). After the council of hierarchs has begun, none of those who have to attend can leave unless for a just reason approved by the president of the council (c. 165 § 4). With regard to the obligation of bishops to attend and the manner of determining the legitimacy of impediment there is no difference between the synod of bishops and the council of hierarchs.

5.4. Quorum and Decisive Majority (c. 166)

According to common law any session of the council of hierarchs is canonical and any individual balloting is valid if the majority of the bishops (over 50%) who are obliged to

attend the council are present. The bishops who are obliged to attend the council are all eparchial and titular bishops. excluding bishops who have resigned from office, bishops who have been excused by the council for a lawful reason and bishops who are barred from participation in accordance with canons 935 § 1 and 1433-1434. However the particular law of anv metropolitan Church sui iuris can require a higher quorum for the canonicity of its sessions. There is similarity as well between the synod of bishops and council of hierarchs as regards the required quorum for the canonicity of the session and the validity of ballots. The council of hierarchs decides matters by an absolute majority (over 50 %) of those who have a deliberative vote and who are present. According to common law there is no significant difference between the synod of bishops and the council of hierarchs regarding the quorum for a canonical assembly of the council and the majority required for a valid decision.32

5.5. Frequency of the Convocation of the Council of Hierarchs (c. 170)

It is necessary to convoke the council of hierarchs:

- 1. At least once a year regularly;
- 2. Whenever special circumstances warrant it;
- 3. Whenever business is to be transacted which is reserved to the council of hierarchs by common law;
- 4. Whenever business is to be transacted which requires the consent of the council of hierarchs.

No fixed time is given for the convocation of the synod of bishops in common law, though particular law can regulate this matter. According to common law, however, the council of hierarchs must be convoked at least once a year for an

³² Canons 166 § 2 & 107 § 2. The Synod of Bishops can establish a higher percentage requirement in particular law, but such a possibility is not given for the council of hierarchs. According to cc. 107 § 1 & 166 § 1, for the election of the patriarch and bishops two-thirds presence is necessary for a canonical quorum of the synod of bishops, but this is not relevant for the council of hierarchs because it cannot elect metropolitans or bishops.

ordinary meeting. Besides, just as with the synod of bishops, it must be convoked when matters exclusively reserved to the council or which require the consent of the same council are to be treated. The council can be also convoked whenever special circumstances demand it (cf. c. 160).

5.6. Statutes (c. 171)

The council of hierarchs can draw up its own statutes. but they must be transmitted to the Apostolic See. 33 According to the letter of the canon it seems that the statutes are transmitted to the Apostolic See for information and not for revision or approval but such action cannot be excluded. The statutes must provide for a secretary of the council, the preparatory commissions, the order of procedure, etc. In addition, the statutes can determine in particular law all matters which are left to the council itself concerning its procedure and functioning. The statutes can regulate the voting powers of auxiliary and resigned bishops (c. 164 § 2); frequency of the ordinary meetings of the council (c. 170); the requirement for a quorum (c. 166 § 1); the time and manner of the promulgation of laws (c. 167 § 3); etc. There is only one important difference between the synod and the council with regard to the enactment and promulgation of statutes: an intervention of the Apostolic See is necessary for the validity of the statutes of the council while the synod of bishops itself makes and approves its statutes without any participation of a higher authority.

6. The Powers and Functions of the Council of Hierarchs

6.1. Legislative Power (c. 167)

Like the synod of bishops of a patriarchal or major archiepiscopal Church, the council of hierarchs is the highest legislative organ of a metropolitan Church *sui iuris*. The metropolitan can enact laws for his eparchy but not for the

^{33 &}quot;Consilium Hierarcharum sua conficiat statuta Sedi Apostolicae transmittenda, in quibus provideatur de secretaria Consilii, de commissionibus praeparatoriis, de ordine procedendi necnon de aliis mediis, quae fini consequendo efficacius consulant". Canon 171.

entire metropolitan Church. Only the council of hierarchs canonically convoked and presided over by the metropolitan can make laws for the entire metropolitan Church. Regarding the legislative power of the council of hierarchs, canon 167 stipulates the following:

Can.167 § 1. The council of hierarchs can make laws and norms, without prejudice to the canons in which its power to make them is expressly treated, also in those cases in which common law remits the matter to the particular law of a Church *sui iuris*.

- § 2. The metropolitan is to inform the Apostolic See as soon as possible of the laws and norms enacted by the council of hierarchs. Laws and norms cannot be validly promulgated before he has written notification from the Apostolic See of the reception of the acts of the council. The metropolitan is to inform the Apostolic See also of other proceedings of the council of hierarchs.
- § 3. The metropolitan is to see to it that the laws of the council of hierarchs are promulgated and its decisions published.

6.1.1. Extension of the Legislative Power of the Council

The council of hierarchs is competent to legislate only on those matters expressly mentioned in common law and whenever a matter is relegated to particular law. The synod of bishops of a patriarchal or major archiepiscopal Church has general competence to enact any law that is not contrary to the common law promulgated by the pope or the Apostolic See, while the council can legislate only on those matters already determined in the Code.

6.1.2. Reception by the Apostolic See

According to the canon, after the closing of the council of hierarchs the metropolitan has to inform the Apostolic See of the laws and norms made by it. The laws and norms enacted by the council cannot be validly promulgated before the advent of the written notification from the Apostolic See of the reception of the acts of the council. The laws and decisions

are only to be "received" and not to be confirmed or reviewed by the Apostolic See. At any rate the legislative act or decision is indeed that of the council of hierarchs, but the Apostolic See can either abstain from giving the notification of the reception of the laws or demand corrections if the laws do not conform to the *ius commune*. Thus, the intervention of the Apostolic See is absolutely necessary for any decision of the council to obtain the force of law. It seems that the Code Commission abstained from using the word review or confirmation to attenuate criticism, but the juridical effects are almost the same. The metropolitan is also obliged to inform the Apostolic See of all other acts and proceedings of the council of hierarchs.

The main difference between the legislative power of the synod of bishops and that of the council of hierarchs consists in the manner of the promulgation of laws. Laws made by the synod of bishops can be promulgated by the patriarch according to the manner and time of promulgation determined by the synod itself, without the intervention of any superior authority (c. 111). But as we have indicated above, the laws and norms enacted by the council of hierarchs cannot be promulgated by the metropolitan without the written notification from the Apostolic See of the reception of the acts.

6.1.3. Promulgation of Laws

After the arrival of the written notification from the Apostolic See of the "reception", the metropolitan can promulgate the laws and publish the decisions. The manner of the promulgation of laws and the date on which the laws begin to oblige can be determined by the council of hierarchs itself (c. 1489 § 2).

6.1.4. Binding Force of Laws

Laws enacted by the council of hierarchs and promulgated by the metropolitan after the "reception" by the Apostolic See bind on all those for whom they were issued within the territorial boundaries of the same metropolitan Church *sui iuris* (cc. 157 § 2 & 1491 § 1). Acording to canon 150 § 2, liturgical laws enacted by the synod of bishops and promulgated by the patriarch or major archbishop have the force of

law everywhere in the world. But nothing is explicitly stated in the Code about the binding force of the liturgical laws of the council of hierarchs outside the territorial boundaries of a metropolitan Church *sui iuris*. However, it is evident that liturgical laws enacted by the council of hierarchs are contained mainly in the liturgical books approved by the Apostolic See and hence are valid wherever that liturgy is celebrated.

6.1.5. Particular Law of a Metropolitan Church Sui Iuris

The particular law of a metropolitan Church sui iuris can include the law proper to that Church enacted by the council of hierarchs and promulgated by the metropolitan; laws established by the Roman Pontiff or the Apostolic See for that Church: laws, lawful customs, statutes and regulations of the eparchies, institutes of consecrated life, associations of Christian faithful, ecclesiastical universities and faculties; etc. Our concern here is the legislative power of the council of hierarchs and therefore we deal only with the particular law proper to a metropolitan Church sui iuris that can be enacted by the council of hierarchs. According to canon 167 the council of hierarchs can make laws and norms only on those matters which are expressly treated in the Code and in those cases in which common law remits the matter to the particular law. In the following pages we list all the instances indicated by the Code on which the council of hierarchs can legislate.

Title VI - Metropolitan Churches and Other Churches Sui Iuris

- 1. Determination of the nature of the votes of auxiliary bishops and resigned bishops in the council of hierarchs (164 § 2)
- 2. Statutes of the council of hierarchs (171)
- 3. Statutes of the metropolitan assembly (172, 145)
- 4. Determination of a higher quorum for council of hierarchs (166 \S 1)

Title VII - Eparchies and Bishops

- 5. Conferral of dignities upon clerics by the eparchial bishop (194)
- 6. The days on which the eparchial bishop is to celebrate the Divine Liturgy for the people of the eparchy entrusted to him (198)
- 7. The obligation of the eparchial bishop to foster the liturgical life according to the prescriptions and legitimate customs of his own Church (199 § 1).
- 8. Celebration of the liturgy of hours in cathedrals according to the lawful customs of each Church (199 § 2)
- 9. Determination of the days of special solemnities on which the eparchial bishop must not be absent from the eparchy (204 § 3)
- 10. Determination of just remuneration for the administrator of an eparchy (230 n.1)
- 11. Manner of spending emoluments due to the eparchial bishop during vacancy (230 n. 2)
- 12. Regulation of the election of the delegates of the pastoral council to the eparchial assembly (238 § 1 n.7)
- 13. Regulation of the election of some deacons to the eparchial assembly (238 § 1 n.8)
- 14. Regulation of the election of some superiors of institutes of consecrated life to the eparchial assembly (238 § 1 n. 9)
- 15. To which authority the eparchial bishop should communicate the text of laws, declarations and decrees which have been issued at the eparchial assembly (242)
- 16. Non-celibate presbyters as the protosyncellus and the syncellus (247 § 2)
- 17. Other obligations of the chancellor of eparchial curia (252 § 1)
- 18. Determination of the term of office of the eparchial financial administrator (262 § 2)
- 19. The manner of erecting an eparchial finance committee (263 § 1)
- 20. Norms for presbyteral council (265)

- 21. Members of the presbyteral council who are to be elected by the priests themselves (266 n.1)
- 22. Joining the office of protopresbyter in a stable manner to the office of the parish priest of a particular parish (277 § 1)
- 23. Determination of the term of office of the protopresbyter (277 § 2)
- 24. Determination of the powers and faculties of the protopresbyter (278 § 1)
- 25. Concerning the appointment of a member of an institute of consecrated life as parish priest (284 § 3 n.4)
- 26. Nomination of a pastor for a determined period of time (284 § 3 n.4)
- 27. Permission to entrust a parish to several presbyters and the rights and obligations of the moderator (287 § 2)
- 28. Canonical possession of a parish by a pastor (288)
- 29. Days on which the pastor is obliged to celebrate the Divine Liturgy for the people (294)
- 30. Parish councils dealing with pastoral and economic matters (295)
- 31. Parish registers (296 §§ 1&5)
- 32. Preservation of the older parish books (296 § 5)
- 33. Suitable support and housing of retired pastors (297 § 2)
- 34. Rights and obligations of parochial vicars (302 § 1)

Title VIII - Exarchies and Exarchs

35. Privileges and insignia of an exarch who is not an ordained bishop after the expiry of his function (321 \S 2)

Title X - Clerics

- 36. Institution of minor clerics (327)
- 37. Projects for promoting vocations (329 § 2)
- 38. Particular programme for the training of clerics (330 § 1&3).
- 39. Admission to the minor seminary of those who do not seem to be called to the clerical state, but can be formed to fulfill certain ministries or apostolic work (331 § 1)

- 40. The one who should direct the juridic person of a seminary (335 § 2)
- 41. Statutes of a major seminary of an entire Church sui iuris (337 § 1-3)
- 42. Exercises and texts for strengthening the pastoral formation of seminarians (353)
- 43. Ascription as a cleric in an eparchy before diaconal ordination (358)
- 44. Consent of a determined authority for the licit transfer of a cleric to an eparchy of another Church sui iuris (365 § 2)
- 45. Times of spiritual retreats for clerics (369 §2)
- 46. Suitable means for enabling the clerics to shine forth with the splendor of chastity (374)
- 47. Celebration of the liturgy of hours by clerics (377)
- 48. Frequency of the celebration of the Divine Liturgy (378)
- 49. Complete abstention of clerics from all things unbecoming to their state (382)
- 50. The authority who can permit clerics to exercise business or trade (385 § 2)
- 51. Duration of the leave of clerics from the eparchy (386 § 1)
- 52. Attire of clerics (387)
- 53. Obligation of clerics to contribute to their pension funds, social security as well as health benefits (390 § 2)
- 54. Right of clerics to annual vocations (392)

Title XI - Lay Persons

55. Ecclesiastical functions forbidden to lay people (408 \S 2)

Title XII - Monks and Other Religious as well as Members of Other Institutes of Consecrated Life

- 56. Permanent council in houses (of religious institutes) of less than six members (422 § 2)
- 57. Enactment of more detailed norms concerning secular institutes (569)
 - 58. Establishment of ascetics (other than those prescribed by common law) who imitate hermetic life (570)

59. Societies of apostolic life (572)

Title XII - Associations of the Christian Faithful

60. Private associations (573 § 2)

Title XIV - Evangelization of Nations

- 61. Enacting regulations by which the catechumenate is to be directed (587 § 3)
- 62. Determination of a just remuneration for catechists (591 n. 2)

Title XV - Ecclesiastical Magisterium

- 63. Revocation of the faculty of deacons to preach the word of God (610 § 3)
- 64. More detailed norms about the use of radio, cinema, television and the like dealing with Catholic doctrine or morals (653)
- 65. Protection of the rights of an author's intellectual efforts (666 § 3)

Title XVI - Divine Worship and Especially the Sacraments

- 66. Norms concerning the use of a Catholic building or cemetery or church by non-Catholic Christians (670 § 2)
- 67. Norms for communicatio in sacris (671 § 5)
- 68. Enactment of liturgical norms: in liturgical celebrations, the prescriptions of the liturgical books of each Church are to be diligently observed (3, 161, 162, 200, 209, 278 § 1 n. 3, 309, 403 § 1, 462 § 2, 473 § 1, 674, 683, 699 §§ 2-3, 701, 704, 710, 714 § 1, 742 & 836)
- 69. Minister of baptism (677 § 1)
- 70. Administration of baptism in private homes (687 § 2)
- 71. Age required for a person to assume the role of sponsor $(685 \ \S \ 2)$
- 72. Manner of recording in the baptismal register in the case of an adopted child (689 § 1)

- 73. Time of the reception of the Holy Eucharist by children (697 & 710)
- 74. The role of deacons in the celebration of the Eucharistic liturgy (699 § 2)
- 75. The manner of the participation of the Christian faithful in the Eucharistic celebration (699 § 3)
- 76. Preparation of the Eucharistic bread, observance of the Eucharistic fast, liturgical vestments, etc. (707 § 1)
- 77. The obligation of Christ's faithful to receive the Divine Eucharist (708)
- 78. Distribution of the Divine Eucharist by deacons and other Christian faithful (709)
- 79. Preparation for participation in the Divine Eucharist through fast, prayers and other works (713 § 2)
- 80. Preservation of the Divine Eucharist (714 § 1)
- 81. Offerings for the celebration of the Divine Liturgy (715)
- 82. Times of fast and penance (719)
- 83. Proper place for the celebration of the sacrament of penance (736 § 1)
- 84. Blessing of the oil for use in the sacrament of the anointing of the sick (741)
- 85. Reception of the lower orders (758 § 1 n.5)
- 86. Observation of interstices for licit ordination (758 § 1 n. 6)
- 87. Admission of married men to sacred orders (758 § 3)
- 88. Prescription of a higher age for the diaconate and the presbyterate (759 § 1)
- 89. Publication of the names of the candidates for promotion to sacred orders in the parish church (771 § 1)
- 90. Spiritual retreat of candidates for promotion to sacred ordination (772)
- 91. Engagement which precedes marriage (782 § 1)
- 92. Norms concerning the examination of the parties and other means for enquiries which are to be carried out before marriage (784)
- 93. Record to be made in the register of the dead (789)

- 94. Establishing an older age for the licit celebration of marriage (800 § 2)
- 95. The manner in which the declarations or promises are to be made in mixed marriages (815)
- 96. The pastor before whom marriage is to be celebrated (831 $\S 2$)
- 97. Observance of legitimate customs in the celebration of marriage (836)
- 98. Celebration of marriage by proxy (837 § 2)
- 99. The time for the celebration of marriage (838 § 2)
- 100. Determination of reasons for the separation of spouses (864 § 2)
- 101. Norms concerning sacramentals (867 § 2)
- 102. Constitution, transfer or suppression of holydays and days of penance (880 § 2)
- 103. Suppression of or transfer to a Sunday the holydays of obligation common to all the Eastern Churches with the approval of the Apostolic See (880 § 3)
- 104. Satisfaction of the holydays of obligation by participation in the divine praises (881 § 1)
- 105. The manner of observing fast or penance (882)
- 106. The manner and order of exposing sacred icons or images (886)

Title XVII - Baptized non-Catholics Coming into Full Communion with the Catholic Church

107. The right of the parish priest to receive individual lay persons into the Catholic Church (898 § 3)

Title XVIII - Ecumenism or Fostering the Unity of Christians

108. Promotion of ecumenical initiatives (904 § 1)

Title XIX - Persons and Juridical Acts

109. Designation of guardians for minors (910 § 2)

Title XX - Offices

- 110. Means required for the fulfillment of an office and just remuneration for those who carry out the office (937 § 2)
- 111. Concerning elections (948 § 1)

Title XXII - Recourse against Administrative Acts

- 112. Fixing time-limits for deciding a recourse against an administrative act (1002)
- 113. Empowering the higher authority deciding a recourse to amend a decree (1004)

Title XXIII - The Temporal Goods of the Church

- 114. Concerning taxes that can be levied on physical persons (1012 § 2)
- 115. Setting up limits for the amount of taxes and offerings $(1013 \ \S \ 1)$
- 116. Special funds in each eparchy for the purpose of providing appropriately for the fitting and fundamentally equal support of clerics (1021 § 1)
- 117. Establishing institutes of insurance, social security and health welfare for the clergy (1021 § 2)
- 118. Manner of establishing a common reserve fund in each eparchy (1021 § 3)
- 119. Proper organization of the administration of ecclesiastical goods (1022 § 2)
- 120. Obligation of administrators to draw up each year a budget of income and expenditure (1028 § 3)
- 121. Manner of rendering an account public by administrators of ecclesiastical goods (1031 § 2)
- 122. Determination of the duration of obligation of non-autonomous pious foundations (1047 § 1 n.2)
- 123. The place of a tribunal (1127)
- 124. Conditions for pious foundations 1048 § 2

Title XXIV - Trials in General

- 125. Other cases reserved to a collegiate tribunal (1084 § 1 n.4)
- 126. Persons who are to be present in court while cases are being heard before a tribunal (1129 § 1)
- 127. Time-limit of prescription for some offences (1152 § 1 n.3)

Title XXV - The Contentious Trial

- 128. Mode of notifying judicial acts (1192 § 1)
- 129. The manner of questioning witnesses (1242)
- 130. Expenses and remuneration to be paid to experts (1261)
- 131. The authority who can execute the sentence (1340 § 1)

Title XXVII - Penal Sanctions in the Church

- 132. Adding additional penalties to the penalties established by common law for a certain offence (1405 § 2)
- 133. The authority who can remit penalties imposed in virtue of particular law (1420 \S 2)
- 134. Manner of making a public reprimand (1427 § 1)

Title XXIX - Law, Custom and Administrative Acts

- 135. Another time period for issuing a decree (1518)
- 136. Particular law of a metropolitan Church *sui iuris* includes also lawful customs proper to that Church (c. 1493 § 2). For explicit reference to their observance, see canons 199 § 1, 199 § 2, 230 n. 1, 302 § 4, 383 n. 3, 473 § 1, 505 § 3, 538 § 1, 686 § 1, 715 § 2, 836, 881 § 1, 1022 § 2, 1029, 1515 & 1519 § 1.

6.2. Judicial Power of the Council of Hierarchs

As far as judicial powers are concerned, a metropolitan Church *sui iuris* and a province of a patriarchal or major archiepiscopal Church or even that of the Latin Church are equal. Therefore, we do not find in the new Code special canons on the judicial power of a metropolitan Church *sui iuris*. Since the council of hierarchs has no special judicial powers, the Eastern judiciary system established by the

Eastern Code with regard to the patriarchal or major archiepiscopal Churches is not applicable for the metropolitan Churches *sui iuris*. Therefore these Churches have to follow the judiciary system of the Latin Church as determined in CIC 1983 and the apostolic constitution *Pastor Bonus*.

6.2.1. The Tribunals of First Instance

Just as in the patriarchal or major archiepiscopal Churches as well as in the Latin Church, the eparchial bishop is the judge of first instance in each eparchy and for all cases not expressly excepted by law (c. 1066 § 1) also in a metropolitan Church sui iuris. Cases excepted by law with regard to a metropolitan Church sui iuris include: a) cases reserved to the Roman Pontiff or to the Apostolic See (c. 1060): b) cases of religious because of the competence of their own tribunal (c. 1069 § 1); c) cases excepted because of the competence of the inter-eparchial or inter-Church tribunal constituted in accordance with canons 1067 and 1068. Canon 1066 explicitly states another exception to the rule that the bishop be the adjudicator; if the case concerns the rights or temporal goods of a juridical person represented by the bishop such as the eparchy, eparchial curia, the diocesan seminary. etc., the appellate tribunal, which will normally be that of the metropolitan, is to determine the issue.

The eparchial bishop exercises his judicial power personally or through others, especially through his tribunal. The eparchial tribunal consists of a judicial vicar (c. 1086), judges (c. 1087), auditors (c. 1093), a promoter of justice (c. 1094), a defender of the bond (c. 1096) and notaries (c. 1101). Normally, appeals from an eparchial tribunal are to be made to the metropolitan tribunal (c. 1064 § 1).

As we have indicated above, within the territorial boundaries of a metropolitan Church *sui iuris* an intereparchial tribunal of first instance can be established with the approval of the Apostolic See (c. 1067). Appeal from such a tribunal is to be made to the tribunal designated in a stable manner with the approval of the Apostolic See or to the tribunal designated by the Apostolic See. Similarly an inter-Church tribunal of first instance could also be established if different Churches *sui iuris* are exercising their power within

the same territory (c. 1068). Appeal from an inter-Church tribunal is to be made to the tribunal designated in a stable manner by the Apostolic See.

6.2.2. The Metropolitan Tribunal

The Metropolitan Church *sui iuris* has also only one tribunal as in the province of a patriarchal or major archiepiscopal Church, and this tribunal acts both as the tribunal of the eparchy of the metropolitan and the appellate tribunal for the cases tried in the eparchial tribunals of the metropolitan Church.³⁴ The metropolitan tribunal is established by the metropolitan (c. 159 3°), who with the approval of the Apostolic See can designate in a stable manner an appellate tribunal for the cases in first instances tried before the metropolitan³⁵.

6.2.3. The Tribunals of the Apostolic See

According to canon 1065, "The tribunal of third instance is the Apostolic See, unless common law expressly provides otherwise". The common law "expressly provides otherwise" only with regard to patriarchal and major archiepiscopal Churches. Hence the tribunal of third instance of a metropolitan Church sui iuris is the Apostolic See. The tribunals of the Apostolic, See, namely the Apostolic Penitentiary, the Roman Rota and the Apostolic Signatura are competent to adjudicate cases of a metropolitan Church sui iuris just as in the Latin Church. In accordance with Pastor Bonus Art. 128 and CIC 1983 canon 1444, the Roman Rota judges in third or further instance cases of a metropolitan Church sui iuris unless there is a question of an adjudged

³⁴ "Tribunal metropolitanum, quod non est distinctum a tribunali eparchiae Metropolitae, est tribunal appellationis a sententiis tribunalium eparchialium". Canon 1064 § 1.

^{35 &}quot;A causis in primo gradu iudicii pertractatis coram Metropolita aliove Episcopo eparchiali, qui auctoritatem superiorem infra Romanum Pontificem non habet, fieri debet appellatio ad tribunal ab ipso stabili modo cum approbatione Sedis Apostolicae designatum firmis cann. 139 et 175". Canon 1064 § 2.

³⁶ "Tribunali tertii gradus est Sedes Apostolica, nisi aliter iure communi expresse cavetur". Canon 1065.

matter. The powers and functions of the Supreme Tribunal of the Apostolic Signatura over a metropolitan Church sui iuris are equivalent to those over the dioceses and metropolitan provinces of the Latin Church.³⁷

In patriarchal and major archiepiscopal Churches, the synod of bishops with its synodal tribunal of three elected bishops and the ordinary tribunal of the proper Church constitutes the highest tribunal within the territorial boundaries of the same Church, judging cases in all instances up to the final sentence except those reserved to the Roman Pontiff or Apostolic See. Not only is the council of hierarchs not the superior instance of a metropolitan Church sui iuris. but it is also deprived of any judicial power. Therefore, the Guideline established by the Plenary Assembly of Pontifical Commission concerning the judicial power of Eastern Churches is not observed in metropolitan Churches sui iuris requiring that "every Eastern Church should be empowered to organize its own tribunal so that it will be in a position to deal with cases (not reserved to the Apostolic See) in all three instances up to the final sentence".38

6.3. Electoral Powers of the Council of Hierarchs

6.3.1. Appointment of Metropolitan

In a metropolitan Church *sui iuris* all that the council of hierarchs can do with regard to the appointment of the metropolitan, the hierarchical head of the proper Church, is to compile a list of at least three of the more suitable candidates and send it to the Apostolic See, observing secrecy even toward the candidates (c. 168). When the metropolitan see in a metropolitan Church *sui iuris* becomes vacant, the Roman Pontiff directly appoints the metropolitan (c. 155 § 1). Although the council of hierarchs can send a list of at least three candidates to the Apostolic See for the appointment of

For the competence of the Roman Rota and Apostolic Signatura, see chapter 8, headings nn. 7.3. & 7.4.

³⁸ Cf. Nuntia 3 (1976) 23.

metropolitan, the pope is not limited to the list; he may select and appoint someone he considers suitable through free conferral.³⁹

Just like the metropolitans of the Latin Church, the hierachical head of a metropolitan Church is obliged to request the pallium from the Roman Pontiff. The canons of CIC and CCEO are very similar regarding the requirement of the pallium:

CIC 1983 c. 437 § 1. The metropolitan is obliged to request the pallium from the Roman Pontiff, either personally or by proxy, within three months of his episcopal consecration or, if he has already been consecrated, of his canonical appointment. The pallium signifies the power which, in communion with the Roman Pontiff, the Metropolitan possesses by law in his own province.

CCEO c. 156 § 1. The pallium is a symbol of metropolitan power and of the full communion of the metropolitan Church *sui iuris* with the Roman Pontiff. The metropolitan is bound by the obligation to request it of the Roman Pontiff within three months from his episcopal ordination or, if he was already ordained bishop, from his enthronement.

According the Latin tradition, the pallium is the symbol of metropolitan power and of full communion of the metropolitan with the Roman Pontiff. Hence before the reception of the pallium, a metropolitan cannot exercise his powers. In accordance with this tradition the new Code establishes that the metropolitan cannot convoke the council of hierarchs or ordain bishops until he receives the pallium from the Roman Pontiff (c. 156 § 2).40

During the vacancy of the metropolitan see in a

³⁹ J. H. PROVOST, "Some Practical Issues for Latin Canon Lawyers from the Code of Canons of the Eastern Churches", 42; J. D. FARIS, Eastern Catholic Churches: Constitution and Governance, 392.

⁴⁰ In a patriarchal or major archiepiscopal Church, the patriarch or major archbishop cannot convoke the synod of bishops or ordain bishops until he receives ecclesiastical communion from the Roman Pontiff (c. 77 § 1).

metropolitan Church *sui iuris*, the eparchial bishop of the same Church who is senior by episcopal ordination becomes the administrator by law itself (c. 173 § 1 n.1). He has to inform the Roman Pontiff as soon as possible of the vacancy of the metropolitan see, and the Roman Pontiff appoints the new metropolitan in due time.

The patriarchs or major archbishops are elected by the respective synod of bishops, while the metropolitan of a metropolitan Church *sui iuris* is directly appointed by the Roman Pontiff. The election of a patriarch is free but the synodal election of a major archbishop needs confirmation from Rome

6.3.2. Appointment of Bishops

In a metropolitan Church sui iuris bishops are directly appointed by the Roman Pontiff. According to canon 168, the council of hierarchs compiles a list of at least three of the more suitable candidates and sends it to the Apostolic See, as is done for the appointment of metropolitan.41 The list can include more candidates according to the need of each metropolitan Church sui iuris. When a see becomes vacant or a new eparchy is established, the Roman Pontiff freely appoints the bishop. As in the appointment of metropolitan. the Roman Pontiff is not bound to choose from the list presented by the council of hierarchs, for he can appoint whom he wishes. Coadjutor or auxiliary bishops are also appointed by the Roman Pontiff in the same manner. In fact, the council of hierarchs has no electoral powers, and the procedure for the appointment of bishops of the Metropolitan Church sui juris is the same as that of the Latin Church.42

The bishops of the metropolitan Church are directly appointed by the Roman Pontiff (c. 181 § 1), and the canonical

^{41 &}quot;Ad Metropolitae et Episcoporum nominationem quod attinet, Consilium Hierarcharum pro unoquoque casu elenchum componat trium saltem candidatorum magis idoneorum, eumdemque Sedi Apostolicae secreto servato, etiam erga candidatos, mittat". Canon 168.

⁴² For the procedure for the nomination of bishops in the Latin Church, see chapter 8, heading n. 6.

provision is also from Rome (c. 189 § 1). In the event of the resignation of eparchial bishops, the letters of resignation are submitted to the Roman Pontiff (c. 210 § 2). The eparchial bishop of a metropolitan Church should send the quinquennial report of his eparchy to the Apostolic See, and he is expected to send only a copy to the metropolitan as soon as possible (c. 206 § 2). Hence the bishops of a metropolitan Church sui iuris are directly responsible to the Roman Pontiff and not to the council of hierarchs with its head, the metropolitan. Therefore, the council of hierarchs, together with its head the metropolitan, does not constitute an intermediary structure between the eparchial bishops and the supreme authority of the Church in the manner of the synod of bishops of a patriarchal or major archiepiscopal Church.

6.4. Administrative Powers of the Council of Hierarchs

The metropolitan is the superior administrative authority of a metropolitan Church *sui iuris* in the same manner as the patriarch and the major archbishop. The patriarch or major archbishop can perform administrative acts without the consent of the synod of bishops, or the consent or counsel of the permanent synod, except in those cases in which such consent or counsel is explicitly prescribed in *ius commune* (c. 110 § 4). But the metropolitan, as a general rule, must seek the consent of the council of hierarchs in order to perform those administrative acts which are committed by common law to the superior administrative authority of a Church *sui iuris*.⁴³

The council of hierarchs, as the superior authority of a metropolitan Church *sui iuris* has the obligation to take care that pastoral needs of the Christian faithful are provided for. In this matter it can stabilize what seems opportune to promote the growth of faith, to foster common pastoral action, to regulate the mores and to preserve the respective rite and

^{43 &}quot;Firmis canonibus, in quibus expresse de actibus administrativis Metropolitae, qui Ecclesiae metropolitanes sui iuris praeest, agitur, eius est etiam illos actus administrativos ponere, qui iure communi superiori auctoritati administrativae Ecclesiae sui iuris committuntur, de consensu tamen Consilii Hierarcharum". Canon 167 § 4.

common ecclesiastical discipline (c. 169). With regard to the fulfillment of these obligations the common law commits the following rights and obligations to the council of hierarchs.

In the following matters the synod of bishops and the council of hierarchs have equal power:

- 1. Agenda of a metropolitan assembly (c. 172);
- 2. Provision for the support of bishops emeriti (c. 211 § 2);
- 3. Preparation of particular programmes for clerical formation (c.3 30 §§ 1 & 2);
- 4. Establishment of a common seminary for several eparchies (c. 334 § 1);
- 5. Establishment of a commission for the moderation of missionary activity (c. 585 §2);
- 6. Promotion, preservation and defence of the integrity and unity of faith and good morals (c. 605);
- 7. Norms on catechetical formation arranged in a catechetical directory and the preparation of catechisms for various groups of Christian faithful (c. 621);
- 8. Erection or approval of Catholic universities as well as ecclesiastical universities and faculties;44
- 9. Prohibition of certain means of social communication detrimental to the integrity of faith and morals (c. 652 § 2);
- 10. Approval of liturgical books after a previous review by the Apostolic See and the approval of the translations of these books (c. 657 §§ 1 & 2);
- 11. Preparation of a list of approved censors for books and the establishment of a commission of censors (c. 664 § 1);
- 12. Matters concerning the administration of sacraments to non-Catholic Christians (c. 671 § 4);
- 13. Distribution of the Eucharist by persons other than

⁴⁴ Canons 642 & 649. The 1987 Schema (SCICO) in canons 639 § 2 and 646 explicitly mentioned that the metropolitan with the consent of the council of hierarchs can perform these administrative acts. But the Code dropped it. However, in accordance with canon 167 § 4, the metropolitan with the consent of the council of hierarchs can do these administrative acts. Cf. Nuntia 27 (1985) 25.

priests or deacons (c. 709 § 2);

- 14. Reservation of certain sins to a determined authority in order to provide for the welfare of souls (c. 727);
- 15. Length of studies prior to the diaconate (c. 760 § 1);
- 16. Reception of a non-Catholic bishop into the Catholic Church (c. 898 § 1).

In comparison with the synod of bishops, the following acts which can be performed either by the synod or by the patriarch with the consent of the synod cannot be transacted by the council of hierarchs or the metropolitan with the consent of the council.⁴⁵

- 1. Transfer of the metropolitan see (c. 57 § 3);
- 2. Establishment, unification or suppression of eparchies (c. 85 § 1);
- 3. Granting a coadjutor or an auxiliary bishop (c. 85 § 2 n. 1);
- 4. Transfer of bishops (c. 85 § 2 n. 2);
- 5. Erection, modification and suppression of exarchies (c. 85 § 3);
- 6. Agreement with civil authority (c. 98);
- 7. The pastoral care of Christian faithful outside the territory (c. 148 §§ 1 & 2);
- 8. Request for the resignation of eparchial bishops (c. 210 § 3);
- 9. Removal of an eparch (c. 314 § 2);
- 10. Removal from clerical state (c. 334 § 1);
- 11. Suppression of a monastic confederation (c. 440 § 2);
- 12. Election of a religious to an office without the written consent of the major superior (c. 431 § 1);
- 13. Suppression of juridical persons (c. 928 n. 1);
- 14. Powers concerning the alienation of property (c. 1036 §§ 1-3);

⁴⁵ Those administrative acts which are completly irrelevant to a metropolitan Church and which are applicable only to a patriarchal or major archiepiscopal Church are not mentioned here.

15. Reservation of penalty (c. 1423 § 1).

Conclusion

The basic principle established by Vatican II, namely the right and obligation of the Churches of the East to govern themselves according to their own special disciplines, is not fully realized with regard to the metropolitan Churches sui iuris. In addition to the restrictions of the patriarchal and major archiepiscopal Churches, the powers of metropolitan Churches are further limited by the competence of the Apostolic See. As a result, the synodal governance according to the Eastern tradition is realized in a very restricted manner in metropolitan Churches sui iuris. The laws and norms enacted by the council of hierarchs "in those cases in which common law remits the matter to the particular law of a Church sui iuris" cannot be promulgated unless there is a written notification of reception from the Apostolic See. The metropolitan himself and the bishops of the metropolitan Church are directly appointed by the Roman Pontiff. The metropolitan tribunal is equivalent to such tribunals of the Latin Church, and hence the third instance of appeal is always in Rome. Thus the metropolitan Churches sui iuris have legislative power in a restricted manner, yet they have no electoral and judicial powers.

In confrontation with the patriarchal and major archiepiscopal Churches, a metropolitan Church sui iuris can be considered as a stage in the growth of a Church towards perfection. The metropolitan Churches sui iuris have to grow organically in accordance with their own liturgical, theological, spiritual and disciplinary patrimony in the socio-cultural milieu of the place where they are situated under the guidance of the Roman Pontiff. In the course of time, metropolitan Churches can be elevated to a higher status sui iuris, taking into consideration their maturity and progress.

Chapter Six

THE PATRIARCHAL, MAJOR ARCHIEPISCOPAL AND METROPOLITAN ASSEMBLIES

Introduction

The Second Vatican Council countermanded the hierarchical, pyramidal monarchic ecclesiology and incontrovertibly affirmed that the Church is the people of God. Both Codes of canon law reiterated the conciliar magisterium and established certain fundamental rights of the Christian faithful. All agree that the Christian faithful who share the royal priesthood of Christ have the right and obligation to participate in the governance of the Church according to each one's mission and ministry. On the other hand, the Eastern Code determined that only ordained bishops of the same Church participate in the synod of bishops, and thus excluded completely the participation of priests, religious, deacons and other Christian faithful from the synod, even with a consultative vote. Nevertheless, in order to provide for the involvement of the Christian faithful in the governance of the Church, the Eastern Code constituted a new institution, called the patriarchal assembly. In this chapter we indicate the reasons for the exclusion of the Christian faithful from the synod and accentuate the theological basis of the rights of the Christian faithful to participate in the ministry and governance of the Church in accordance with their own condition and status. Then we analyze the nature, purpose, membership and other important aspects of the patriarchal assembly.

Orientalium Ecclesiarum (n. 10) regulates that "what is laid down concerning patriarchs applies also, in accordance with canon law, to major archbishops who rule the whole of some individual church or rite". According to canon 152 of the new Eastern Code, "what is stated in common law concerning patriarchal Churches or patriarchs is understood to be applicable to major archiepiscopal Churches and major archbishops, unless common law expressly provides otherwise or it is evident from the nature of the matter". As far as the above-said assembly is concerned, there is no juridical difference

between patriarchal and major archiepiscopal Churches. However, for the sake of distinction one may use the expression patriarchal assembly or major archiepiscopal assembly. According to canon 172, "In a metropolitan Church sui iuris an assembly is to be held according to the norm of cann. 140-145 and is to be convoked every five years; the metropolitan is competent to do whatever is said there about the patriarch". Thus, what we treat about the patriarchal assembly in the following pages is also applicable for the major archiepiscopal and metropolitan (sui iuris) assemblies.

1. Exclusion of Christian Faithful from the Synod

According to the former legislation of the Eastern Churches Cleri Sanctitati, though in the synod of election of patriarch and bishops (cc. 221-239 & 251-255) only bishops (including those who have been lawfully elected and confirmed even though they have not yet received episcopal consecration) participated, in the so-called "patriarchal synod" (cc. 341-350) many non-episcopal persons also took part. In "the patriarchal synod", in addition to bishops (eparchial and titular), apostolic administrators of eparchies, exarchs and administrators of vacant sees took part with deliberative vote.1 Moreover, the president of an association of monastic confederations. presidents of monastic confederations and the supreme superiors of the clerical religious institutes were de jure members.2 However these persons normally possessed only a consultative vote, unless the Apostolic See or the synodal Fathers granted a deliberative vote to the president of a monastic association or the president of a monastic

Cuilibet Synodo assistere debent cum suffragio deliberativo, praeter praesidem, Episcopi residentiales, qui sui loco mittere possunt Coadiutorem vel Auxiliarem, Episcopi titulares, apostolici eparchiarum Administratores, Exarchi, Administratores sedium vacantium. CS c. 341 § 1.

Praeter eos de quibus in can. 341 § 1, vocari debent: Ad Synodum Patriarchalem, Praeses Consociationis Confederationum monasticarum, Praeses Confederationis monasticae et supremi aliarum Religionum clericalium Moderatores. CS c. 342 n. 1.

confederation.³ In an archiepiscopal synod, in addition to those already mentioned, the superiors of autonomous monasteries, other major superiors of clerical religious institutes and two consultors from the eparchial consultors of each eparchy took part, but only with consultative vote.⁴ Laws were made by the patriarch or major archbishop only in this synod for the whole patriarchal or archiepiscopal Church.⁵ Thus it is evident that in the "patriarchal synod" which enacted laws, non-episcopal persons participated, some even with a deliberative vote.

According to the ancient tradition of the Church, only bishops participated in the synod. In the first seven ecumenical synods, and in the important provincial synods which played a unique role in Eastern canonical legislation, namely the synods of Ancyra, Gangra, Neo-Cesarea, Antioch, Laodicea, Carthage and Constantinople (394), only bishops participated, though their numbers varied. Similarly, P. Hinschius in his esteemed study about different kinds of councils and synods in the history of the Church concludes that in principle only bishops participated in the synods with

³ Alii ex utroque clero viri ad Synodos convocati suffragio tantum consultivo gaudent, nisi Praesidi Consociationis monasticae et Praesidi Confederationis monasticae Sedes Apostolica vel, secreto scrutinio, Patres Synodi deliberativum suffragium expresse concesserint. CS c. 341 § 2.

⁴ Ad Synodum archiepiscopalem et provincialem, ii de quibus in n. 1, Superiores monasteriorum sui iuris, salvo iure particulari, ceterique Superiores maiores Religionum clericalium qui in territorio resideant et consultores eparchiales omnis eparchiae cuius Hierarcha ad normam can. 341 § 1, Synodo interesse debet, qui mittant ad Synodum duos ex consultoribus collegialiter designatos. CS c. 342 n. 2.

⁵ Leges, universalibus Ecclesiae legibus iisque etiam quas Sedes Apostolica pro patriarchatu constituit non contrarias, sive integrum patriarchatum ipsae respiciant sive aliquam ipsius partem, seu personarum coetum, Patriarcha, tantum in Synodo patriarchali de quo in can. 340 § 1 ferre valet. C. 326 § 1 n. 6. Legum in Synodo archiepiscopali latarum, firmo can. 350, § 1, promulgationem sedulo curare: Cf. CS c. 243 § 1.

⁶ Cf. Nuntia 7 (1978) 21.

deliberative vote. In the study called, "The Importance of the Conciliar Process in the Ancient Church for the Ecumenical Movement", published by the World Council of Churches in 1968, the following, statement appeared concerning membership in the ancient synods:

A mark of the councils of the ancient Church was that they were composed of bishops, Eusebius reports meetings to combat the Montanists which may have included bishops and laymen. The later synods and councils were assemblies of bishops, however. This is closely related to the understanding of the bishop's office as it had developed at that time. Bishops received the charisma and the task of protecting the truth in the Church entrusted to them. Therefore it is natural that they were the ones who met in synods and councils. They represented their church at the synod and stood not only for them selves but also for the whole Church. Of course, theologians who were priests, deacons or laymen also took part in several councils, but only in an advisory capacity.8

From our analysis it is evident that in the early local synods, only bishops participated who represented their eparchial Churches at the synod and stood not only for themselves but also for their Churches. In the early Church bishops were dispensers of the Mysteries and heads of eucharistic communities. Without a bishop there was no Eucharist, and without Eucharist there was no bishop. Hence the whole eucharistic community was represented in the synod by its head, the bishop. If some non-episcopal experts participated in some synods which treated doctrinal and disciplinary questions, they did so only in an advisory capacity.

Only bishops participate in the synod also because of their special charisma. Bishops, who receive from Christ through the action of the Holy Spirit the offices of sanctifying,

⁷ Cf. P. HINSCHIUS, System des Katholischen Kirchenrechts, 474, 499-500, 516 & 544.

⁸ Cf. WCC, Councils and the Ecumenical Movement, 13, J. D. ZIZIOULAS, "The Development of Conciliar Structures", 40-41.

⁹ J. D. ZIZIOULAS, "The Development of Conciliar Structures", 40-41.

teaching and governing through episcopal consecration (the fullness of the Sacrament of Orders), become successors of apostles and, as such, authentic witnesses of the apostolic faith and apostolic tradition. Hence only they can authentically decide maters of faith and morals.

In harmony with the ancient tradition already indicated, besides the basic principles established by the "Guidelines for the Revision of Oriental Canon Law" approved by the First Plenary Assembly of the Pontifical Commission held on 18-23 March 1974, the Coetus de S. Hierarchia at the beginning of its work formulated some basic orientations regarding the synodal structure of Eastern Churches. Accordingly it was decided that there should be only one synod in a patriarchal or major archiepiscopal Church, namely the synod of bishops, and the so-called patriarchal synod-in which many nonepiscopal persons also participated even with deliberative vote (in CS cc. 340-342) might be eliminated. The Commission also decided to institute a patriarchal assembly to serve as a consultative body in which a wide participation of priests, deacons, religious and laity would be assured.

In attune with this decision, according to the new Eastern Code there is only one synod for the whole patriarchal or major archiepiscopal Church, in which all and only ordained bishops of the same Church participate. This synod elects the patriarch or major archbishop and bishops, enacts laws for the entire Church and acts as the superior tribunal of the same Church. By strictly reserving the participation in the synod only to the ordained bishops of the same Church, the new Eastern Code impeded the participation of the

¹⁰ Cf. Lumen gentium, 21 & 24, Christus Dominus, 2 & 4, Dei verbum, 7; Presbyterorum ordinis, 2.

[&]quot;Qu'il y ait dans les patriarcats un seul Synode, celui des évêques et qui est appelé actuellement 'Synodus electionum', et que soit éliminé celui qu'on appelle 'Synodus patriarchalis'" (CS cc. 340-342). Nuntia 2 (1976) 50; also in Nuntia 7 (1978) 21.

[&]quot;Qu'on institue un 'Conventus patriarchalis' (Conseil patriarcal; il y aurait alors à changer le nom de l'institution du CS can. 296-297) qui n'aurait qu'un voix purement consultative, auquel serait admise une large participation de prêtres, de diacres, de religieux et de laics (peut être à travers délégués diocésains)". Nuntia 2 (1976) 51; see also Nuntia 7 (1978) 21.

representatives of other Christian faithful in the synod even with a consultative vote. Thus excluded from the synod are:

- 1. Priests: through the Sacrament of Orders priests participate in the eternal priesthood of Christ and receive their ministry from God, through the action of the Holy Spirit, though they can exercise this ministry only in communion with the bishops and in the manner and place determined by the bishops. While not having the supreme degree of the pontifical office, the priests, by virtue of the Sacrament of Orders, in the image of Christ, the supreme and eternal priest, "are consecrated in order to preach the gospel and shepherd the faithful as well as to celebrate divine worship as true priests of the New Testament". In other words, priests who participate in the priesthood and ministry of Christ are excluded from participation in the governance of their Church.
- 2. Deacons: at a lower level of the hierarchy are to be found deacons who receive the imposition of hands "not unto the priesthood, but unto the ministry" (LG 29).
- 3. Monks, religious and members of other institutes of consecrated life: monks and religious are those Christian faithful who under the action of the Holy Spirit totally dedicate themselves by a new and special title through public vows of obedience, chastity and poverty to the acquisition of perfect charity in service to the Kingdom of God for the building up of the Church and the salvation of the world as a sign of the foretelling of heavenly glory (c. 410). Such Christian faithful who completely dedicate themselves for the building up of the Church and the salvation of the world cannot participate in the synod, at least in a representative manner.
- 4. Other Christian faithful: who through the reception of the sacraments of Initiation participate in the royal priesthood of Christ are also excluded from the synod.

2. The Right of the Christian Faithful to Participate in the Governance of Their Church

The source of power, offices and ministries in the Church is the most Holy Trinity who acts through the liturgy-

¹³ Lumen gentium, 28; cf. also Presbyterorum ordinis, 2 & 4-6.

sacraments. Through the sacraments of Initiation, namely Baptism, Confirmation and Eucharist, all the Christian faithful participate in the life and being of God, share in the priestly, prophetic and kingly office of Christ, and become temples of the Holy Spirit and consequently children of God and members of the Church. All the Christian faithful who have received the sacraments of Initiation become the people of God. the Church. Therefore, it is a mistake to state that the Christian faithful belong to the Church. In fact the Christian faithful are the Church, or the Church is the people of God. In this sense Pope Pius XII once stated that the faithful, more precisely the lay faithful, "ought to have an ever-clearer consciousness not only of belonging to the Church, but of being the Church, that is to say, the community of the faithful on earth under the leadership of the Pope, the head of all, and of the bishops in communion with him. These are the Church".14 The Second Vatican Council incontrovertibly proclaimed that Church is the people of God, among whom some are bishops. priests, deacons, religious and lav people (LG 9-16).

Through the reception of the sacraments of Initiation the Christian faithful, men and women, receive their mission and ministry from God the Father, through Christ, by the action of the Holy Spirit: and consequently they share in the teaching, sanctifying and governing office of the Church in their own manner. 15 Therefore all the Christian faithful have a right and obligation to participate in the life, ministry and governance of the Church in their own way according to each one's condition and function. Regarding this point the Eastern Code clearly states: "Christ's faithful are those who, incorporated as they are into Christ through baptism, have been constituted the people of God; and so, participating in their own way in the priestly, prophetic and royal function of Christ, they are called, each according to his or her condition, to exercise the mission which God has entrusted to the Church to fulfill in the world".16

¹⁴ PIOUS XII, Discourse to the New Cardinals, February 20, 1946, AAS 38 (1946) 149.

¹⁵ Cf. Lumen gentium, 11, 33-34; Apostolicam actuositatem, 2.

¹⁶ CCEO, c. 7, see CIC c. 204.

By virtue of the sacraments of Initiation, there is true equality of dignity and action among all Christ's faithful. Owing to this dignity they all cooperate, each according to his or her own condition and function, in the building up of the Body of Christ. Beyond doubt the equality indicated here is only a basic ontological reality which does not imply an equality of "condition and function", as well as offices and ministries in the Church. In other words, without hampering in any way the basic ontological equality among all Christ's faithful, some can exercise special offices and ministries according to his or her divine call and mission for the common good of the Church. As St. Paul points out in his first epistle to the Corinthians:

There are varieties of gifts, but the same Spirit; and there are varieties of service, but the same Lord; and there are varieties of working, but it is the same God who inspires them all in every one. To each is given the manifestation of the Spirit for the common good. To one is given through the Spirit the utterance of wisdom, and to another the utterance of knowledge according to the same Spirit, to another faith by the same Spirit, to another gifts of healing by the one Spirit, to another the working of miracles, to another prophecy, to another the ability to distinguish between spirits, to another various kinds of tongues, to another the interpretation of tongues. All these are inspired by one and the same Spirit, who apportions to each one individually as he wills (1 Cor. 12: 4-11).

Even if there is only one Spirit, one Lord and one God, and all Christians receive the same baptism and profess the same faith (cf. Eph. 4, 4-6), the gifts and ministries which the Spirit apportions to each one for the common good of the Church are different and admit various grades. Thus "God has appointed in the Church first apostles, second prophets, third teachers, then workers of miracles, then healers, helpers, administrators, speakers in various kinds of tongues" (1Cor.12: 28; cf. Eph. 4:11).

As we have accentuated above, even today, some from among the Christian faithful are called by Christ to receive

¹⁷ Cf. Lumen gentium, 32, CCEO c. 11; CIC c. 208.

the sacrament of Orders, and thus special powers and ministries required for the service of the community of faithful. These ordained ministries express and realize a participation in the Priesthood of Jesus Christ that is different, not simply in degree but in essence, from the participation given to all the faithful through the sacraments of Initiation. 18 Besides the powers and functions that find their foundation in the sacraments of Initiation common to all the Christian faithful. the "Sacrament of Orders gives the ordained minister a particular participation in the office of Christ, the Shepherd and Head, and in his Eternal Priesthood". 19 The grade of this "particular participation" in the office and priesthood of Christ varies according to the grade of the Orders - diaconate. priesthood and episcopate. Therefore, bishops, priests, deacons, religious and other Christian faithful, despite their basic ontological equality rooted in the Sacraments of Initiation, are not participating in the governance and ministry of the Church in the same level, but each according to his or her own condition, ecclesial status and function. As Prof. J. Kollaparambil rightly underlines:

The Christian faithful in Sacred Orders—deacons, priests and bishops—have in addition to the common rights and duties of the Christ's faithful, those rights and duties proper to their ordained grade. A pastor or parish priest has all the common rights and duties of the Christ's faithful plus those of the priests and those proper to his office of the pastor. An eparchial bishop has all the rights and duties of a bishop plus those proper to his office as eparchial bishop. The head of a sui iuris Church has the rights and duties common to Christian faithful, plus the rights and duties of priests, bishops, and those proper to the office of the head of the sui iuris Church. The pope has all the above, plus those rights and duties of the head of the Church Universal.²⁰

¹⁸ Cf. Lumen gentium, 10; JOHN PAUL II, Christifideles laici, n. 22, AAS (1989) 428-429; Catechism of the Catholic Church, n. 1546.

¹⁹ Christifideles laici, n. 23, AAS 81 (1989) 430.

J. KOLLAPARAMBIL, "The Institute of Yogam in the Oriental Churches", Canonical Studies (Bombay) 1996.

It is to be further specified that only those Christian faithful who are in sacred orders are capable of the power of governance according to the grade of their ordination. The rest of the Christian faithful can only cooperate in the exercise of the power of governance (cf. c. 979). Thus, the non-ordained Christian faithful have only the right to cooperate in the ministry and governance of the Church in accordance with each one's "condition and function" in the Church.

The very first title of the new Eastern Code, entitled "the rights and obligations of all Christian faithful" (cc. 7-26). establishes that Christian faithful "have the right and at times even the duty, in keeping with their knowledge, competence and position to manifest their views on matters regarding the good of the Church to the pastors of the Church and, with due regard for the integrity of faith and morals and for reverence towards the same pastors, and with consideration for the common benefit and the dignity of the persons, also to others of the Christian faithful (c. 15 § 3). Moreover, the Christian faithful are at liberty to make known their needs, especially the spiritual needs, and their desires to the pastors of the Church (c. 15 § 2). They have the rights to worship God according to the prescriptions of their own Church sui iuris. to follow their own form of spiritual life (c. 17), and to receive a Christian education (c. 20).

On the one hand, the Eastern Code excludes the Christian faithful - priests, deacons, religious and other Christian faithful - from the synod, while on the other, it affirms their right to participate in the ministry and governance of the Church according to each one's condition and function. The patriarchal assembly can be viewed as a compromise and integration of the different theologico-canonical dimensions already indicated.

3. Patriarchal Assembly as a Compromise-Solution

We have already annotated that according to Eastern tradition the bishops participate in synods or councils not as private individuals, but as heads of Christian communities or particular Churches. Each bishop represents his particular Church and brings this Church to the whole of ecclesial unity with its faith as it is epiphanized, lived and experienced in

his community. Therefore, a synod or council means not simply the gathering of bishops, but the meeting or communion of eparchial Churches and their faith. Thus the whole Christian community in fact speaks through the mouth of its bishop.

An eparchial bishop can truly represent his eparchy in the synod only if he transforms the eparchial Church into a true communion of the Christian faithful entrusted to his care. In fact there are many collegial organs in every eparchy that consult the bishop, such as the eparchial assembly (cc. 235-242), the pastoral council (cc. 272-275), in which priests, religious, men and women participate. Moreover, there are the presbyteral council (c. 264-270) and the college of eparchial consultors (c. 271) in each eparchy. If the eparchial bishop makes use of the services of all these collegial organs in the eparchy, he can truly represent his eparchial community in the synod.

In the present circumstances such indirect participation of the Christian faithful in the synod through their bishops does not seem sufficient. In the official document of the World Council of Churches, "The Importance of the Conciliar Process in the Ancient Church for the Ecumenical Movement" states:

We are not in agreement whether exclusively episcopal composition is essential or not for a council. We are all of the opinion that a council is a matter for the whole Church and that, therefore, the Churches must be represented to the greatest extent possible. Some say that this happens through the bishops who have received the charisma of their office; others are of the opinion that other forms of representation can be found today. They think especially of a mixed assembly (clergy and laity).

The new Eastern Code which reserved to ordained bishops the participation in the synod, established another institution called the patriarchal assembly for ensuring the participation of priests, deacons, religious and lay faithful in the governance of the Church according to each one's grade of order, condition and function. The patriarchal assembly is a new institution whose exact nature and competence are still to be developed in the future, in spite of the general norms and regulations stipulated in the common Code.

4. Concept of Patriarchal Assembly

Canon 140 delineates the patriarchal assembly in the following manner: "The patriarchal assembly is a consultative body of the whole Church presided over by the patriarch. It lends its help to the patriarch and to the synod of bishops of the patriarchal Church in dealing with matters of major importance especially to suit the various kinds of apostolate and their methods as well as ecclesiastical discipline to the ever changing situations of the times and to the common good of the respective Church but also taking into account the common good of the entire territory where there are several Churches sui iuris".

- 1. The patriarchal assembly is only a consultative body. In an eparchy by divine law the eparchial bishop is the sole legislator (cc. 191 & 241). Consequently all other collegial organs which assist the bishop in the governance of the eparchy, like the eparchial assembly (cc. 235-242), the pastoral council (cc. 272-275) the presbyteral council (cc. 264-270) and the college of eparchial consultors (c. 271), have only a consultative character. Likewise in a patriarchal Church the synod of bishops canonically convoked and presided over by the patriarch is "exclusively competent to make laws for the entire patriarchal Church [...]" (c. 110 § 1). Hence, the patriarchal assembly is only a consultative body which cannot make any juridically binding decisions.²¹
- 2. The purpose of the patriarchal assembly is to assist the patriarch and the synod. As canon 140 explicitly states, the aim of patriarchal assembly is to help the patriarch and the synod of bishops "in dealing with matters of major importance especially to suit the various kinds of apostolate and their methods as well as ecclesiastical discipline to the ever changing situations of the times and to the common good of the respective Church [...]". The patriarchal assembly is predominantly a pastoral institution dealing mainly with important matters of a pastoral nature such as various kinds of apostolate, the methods of fostering ecclesiastical discipline, etc. The patriarchal assembly must aim at the over-all growth

²¹ Cf. Nuntia 7 (1978) 40.

and common good of the entire Church, repudiating all kinds of provincialism, sectarianism, exclusivism, ethnicism and vested interests dividing up the Christian community into groups.

3. The common good of the entire territory: though the patriarchal assembly is primarily concerned with the common good of the proper Church, it has to take into account the good of the entire territory where different Churches sui iuris co-exist. This part of the canon is inspired by Christus Dominus number 38 (6) which states: "It is earnestly recommended that, in promoting the discipline of their own Church in their synods, the prelates of the Eastern Churches should, for the more efficacious encouragement of works for the good of religion, also take into account the common good of the whole territory where many Churches of different rites exist. by exchanging views in inter-ritual meetings, according to the norms to be determined by competent authority". It is clear that this text explicitly refers to the synod of bishops and inter-Church assemblies, but it is applied to the patriarchal assembly with the intention of engendering a truly universal forma mentis which seeks the common good of the entire territory, that is, the salus animarum.22 The different Churches which co-exist in the same territory have to act in harmony and concord for the common good, animated by evangelical charity and enlivened by true apostolic zeal.

5. The Frequency of the Patriarchal Assembly

According to canon 141, "the patriarchal assembly is to be convoked at least every five years and whenever the patriarch with the consent of the permanent synod or the synod of bishops of the patriarchal Church considers it useful".

1. The Code has fixed a definite term for the convocation of the patriarchal assembly. According to the spirit of the common law, the patriarch is bound to convoke the patriarchal assembly every five years. The new Eastern Code came into legal force on 1 October 1991, and therefore an assembly should have been held in every patriarchal Church in 1996. During the formation of this canon some

²² Cf. Nuntia 7 (1978) 40-41.

consultors proposed that it would be difficult for the bishops who have to conduct a variety of synods and assemblies to convoke a patriarchal assembly every five years, and therefore a longer interval, for example every ten years or even twenty years, is to be fixed. But the commission opted for the short period (every five years) taking into account the rapidly changing circumstances of the modern world. 23 Considering the signs of the time which manifest in the inextinguishable vearning of the priests, religious and laity for active participation in ecclesial life together with their bishops, frequent convocation of the patriarchal assembly, at least every five years, is inevitable. Such frequent convocation provides for the fruitful discussion and in-depth study of important matters affecting the entire patriarchal Church and enables all sections of the Christian faithful to express their views to the patriarch and the synod of bishops who make the juridically-binding final decision in the synod, considering the hope and aspirations of the people of God, in so far as they are congruent with the faith, morals and sound traditions of each Church sui iuris.

2. Though the Code fixed that a patriarchal assembly is to be convoked every five years, it leaves the patriarch and the synod of bishops free to convene the assembly whenever it seems useful. Since the purpose of the assembly is to assist the patriarch and the synod, it is desirable that those who could receive the assistance may not be prevented from doing so whenever it may be beneficial to them. The patriarch who is the father and head of the Church has the privilege to decide the celebration, but with the consent of the permanent synod.²⁴ Similarly the synod can determine the convocation on the basis of majority vote. It is highly desirable that the patriarch may convoke the assembly in a collegial manner after consulting

²³ Cf. Nuntia 7 (1978) 41. In fact in the initial text of the canon it was stated that "convocatur saltem decimo (unus consultor vult quinto) quoque anno [...]". Cf. Nuntia 7 (1978) 39.

According to the initial text formulated in 1977 the patriarch could have freely convoked the assembly, but later the phrase"cum synodo permanenti" was introduced "afin de garantir davantage la convocation d'un Convenuts selon un mode qui soit en accord et non pas en opposition ou presque avec le Synodus Episcoporum". Nuntia 7 (1978) 41.

the members of the synod of bishops also for ensuring the full participation of all the bishops for such a great event of the proper Church.

6. Membership in the Patriarchal Assembly (c. 143)

The participants in a patriarchal assembly can be grouped mainly into two: a) de iure members who must be convoked to the patriarchal assembly and who enjoy a deliberative vote; and b) guests who are not members of the assembly but who can be invited. If invited, they participate as observers without any vote.

6.1. De Iure Members

- 1. Eparchial bishops and other local hierarchs: according to canon 984 in addition to eparchial bishops, the exarchs, apostolic administrators, administrators of vacant eparchies and exarchies, as well as protosyncelli and syncelli are local hierarchs. All these are *de iure* members of the patriarchal assembly whether they are doing their ministry outside or inside the territorial boundaries of the patriarchal Church.²⁵
- 2. Titular bishops: co-adjutor bishops, auxiliary bishops, retired bishops and bishops of the patriarchal curia inside or outside the territory.
- 3. Presidents of monastic confederations (cf. c. 439), superiors general of institutes of consecrated life and superiors of monasteries *sui iuris* (cf. cc. 435-436). In the "patriarchal synod" of CS only superiors general of the clerical religious institutes could have participated, thus excluding non-clerical men religious institutes and all feminine religious institutes. But the new Code, for fostering the equality of rights among men and women religious, without making any distinction simply states "superiors general of institutes of consecrated life". Therefore the superiors general of non-clerical religious institutes and feminine institutes can equally participate.

Institutes of consecrated life include orders and congregations (cc. 504-553), societies of common life in the

²⁵ Cf. Nuntia 7 (1978) 43.

manner of religious (cc. 554-562), secular institutes (cc. 563-569) as well as societies of apostolic life (cc. 570-572). All these institutes can be of papal right, patriarchal right or eparchial right (cc. 505; 554 § 2; 563 § 2). In a patriarchal assembly the superiors general of all forms of institutes of consecrated life of the same Church, whether clerical or non-clerical, whether of pontifical, patriarchal or eparchial right, participate without any distinction.

- 4. Rectors of Catholic universities, and of ecclesiastical universities as well as deans of faculties of theology and canon law inside the territorial boundaries of the patriarchal Church: universities and faculties are centres of a Church sui iuris where secular sciences are cultivated and Christian revelation is deeply researched. The rectors and deans of such universities and faculties are usually renowned scholars and well-known experts either in secular sciences or in theology and canon law who can contribute enormously for the positive outcome of the patriarchal assembly. According to the canon only rectors and deans of universities and faculties inside the territorial boundaries of the patriarchal Church can be called to the assembly. The right of the rectors and deans to participate in the patriarchal assembly is based on the presumption that they are members of the same Church. If they are not members, they can be invited to participate in virtue of canon 143 § 3 which regulates the participation of the members of other Churches sui iuris 26
- 5. Rectors of major seminaries: rectors of major seminaries, who are responsible for the overall supervision and direction of the seminaries where the formation of the future pastors takes place, have a great responsibility towards the entire Church *sui iuris*. No territorial restriction is made in the canon with regard to the convocation of the rectors. Therefore rectors of major seminaries established outside the territory are also to be called to the assembly.
- 6. Participation of the clergy: according to common law, from each eparchy "at least one presbyter enrolled in the same eparchy, especially a pastor" can participate in the

²⁶ Cf. Nuntia 7 (1978) 44.

assembly. From the wording of the common law at "least one" (saltem unus) it seems that the statutes of the patriarchal assembly of each Church can regulate the number of the participation of the clergy. The common law prefers the participation of a pastor from each eparchy, that is a presbyter to whom is entrusted the care of souls as their proper shepherd in a determined parish (c. 281). The representative of the eparchial clergy is selected in a manner determined by the eparchial bishop.

- 7. Participation of religious: as we have seen above, the superiors general of all institutes of consecrated life of eparchial, patriarchal or papal right are members of the assembly. In addition to these, from each eparchy one from among the religious or members of societies of common life according to the manner of religious (whether male or female; the canon makes no distinction) can participate. He or she is also selected in a manner determined by the eparchial bishop, with the consent of the competent superior.
- 8. Participation of laity: in any Church *sui iuris* the vast majority of the Christian faithful belong to the section of the "laity". According to common law, from each eparchy two lay persons, men or women, can participate in the patriarchal assembly. The canon explicitly states that "unless the statutes determine otherwise", two lay persons participate. Therefore the statutes of the patriarchal assembly of any Church *sui iuris* can decide the participation of a greater number of laity, taking into account the circumstances and tradition of each Church.

All the categories of persons enlisted above are de iure members, and hence they have a right to be convoked to the patriarchal assembly. Consequently they have the corresponding obligation to participate in the assembly unless they are detained by a just impediment (c. 143 § 2). If a member who has received the convocation letter cannot participate in the assembly, he is bound to inform the patriarch about the matter. Only the eparchial bishops can send a proxy if they are impeded from participation.

6.2. Participation of Guests

1. Persons from other Catholic Churches: If different Churches *sui iuris* are present in the territory of the

patriarchal Church, canon 143 § 2 provides for the possibility to invite some persons as representatives to the patriarchal assembly. The patriarch has no obligation to invite persons from other Churches; and if invited they have no obligation to participate. The manner of the participation of such guests is to be determined by the statutes of each patriarchal assembly. Of course they have the right to express their views to the patriarch and synod.

2. Non-Catholics: moreover, some persons from non-Catholic Eastern Churches or other ecclesial communities can be invited to the patriarchal assembly according to the discretion of the patriarch (c. 143 § 4). If invited they are mere observers without any kind of vote or right to address the assembly.

The patriarchal assembly, in which the bishops and the representatives of the clergy, religious and laity from every eparchy (wherever they are constituted) of the same Church participate according to each one's condition and function under the presidency of the patriarch - the father and head of the same Church, is the greatest manifestation of the koinonial unity and fraternal communion of the entire patriarchal Church.

7. The Patriarchal Assembly and the Patriarch

When we addressed the frequency of the patriarchal assembly, we saw that besides the five-year tenure fixed by the common Code, the patriarch has the right to decide an extraordinary patriarchal assembly with the consent of the permanent synod whenever he considers it useful (c. 140). In addition to this, the patriarch is the competent authority to convene the patriarchal assembly; likewise he is by law itself the president of the assembly. However the patriarch can freely appoint a vice-president who presides over the assembly in his absence (c. 142 § 1).27 If the patriarchal see becomes

There were different proposals for determining the office of the vice-president: the senior bishop by episcopal consecration; the local hierarch of the place where the assembly is conducted; and the election of the vice-president by the synod of bishops. But at the end it was decided that the patriarch appoints the vice-president because "qui semble plus digne pour le Pater et Caput qui est ex iure communi Praeses du Synodus Episcoporum, du Synodus permanens et du Convenuts Patriarchalis". Nuntia 7 (1978) 42.

vacant, the assembly is suspended by the law itself. The new patriarch after his enthronement can issue a decree by which he can dissolve or reconvene the assembly (c. 142 § 2). Though the patriarchal assembly can act under the vice-president in the absence of the patriarch, it cannot function if the patriarchal see becomes vacant.

The patriarch is also free to transfer, postpone, suspend and dissolve the patriarchal assembly (c. 142). Neither the consent of the synod of bishops nor the consent or counsel of the permanent synod is necessary for the juridical validity of such actions. This does not mean that the patriarch should act arbitrarily without consulting his brothers in the Episcopate in important acts like the suspension or dissolution of the patriarchal assembly. The general obligation of the patriarch to hear the permanent synod and the synod of bishops in transacting matters of importance is applicable, at least regarding the suspension or dissolution of the assembly before its predetermined date (c. 82 § 3).

Besides the synod of bishops, only the patriarch is competent to determine the subjects to be discussed in the patriarchal assembly.²⁸ Though individual bishops, clergy, religious or other Christian faithful can propose topics for the assembly, the final decision regarding the agenda is made either by the patriarch or the synod of bishops (c. 144 § 1). The patriarchal assembly is a momentous event for the entire patriarchal Church, the success of which depends on due preparation and diligent study. It is the responsibility of the patriarch to form suitable pre-assembly commissions and consultative bodies for such preparation and study. It is also for the patriarch to see to it that the well-studied topics of the assembly are sent to all the members of the assembly in due time so that they can prepare well for a fruitful participation in the assembly (c. 144.§ 2)

All the rights and obligations of the patriarch are incumbent on the major archbishop with regard to a major

²⁸ Some consultors wanted to insert the phrase, "the patriarch with the consent of the permanenet synod" determines the matters to be discussed in the patriarchal asembly, but it was rejected by the commission. Nuntia 7 (1978) 45.

archiepiscopal assembly and on the metropolitan in relation to a metropolitan assembly (of a metropolitan Church sui iuris).

8. Consultative Decision Making in the Patriarchal Assembly

It is to be pointed out from the outset that patriarchal assembly is not a decision-making body - its purpose is to help the patriarch and the synod on important matters. Therefore, any decision made in the assembly has only a consultative character, devoid of any juridical force unless approved by the synod of bishops, and promulgated by the patriarch.

Since the common law in canons 140-145 which deal with patriarchal assembly is silent about the manner of consultative decision making in the patriarchal assembly, the general norms concerning collegial acts are to be applied. Accordingly if the majority of those who must be summoned to a patriarchal assembly are present, what is decided by an absolute majority of those who are present has the force of consultative nature (cf. c. 924).

The patriarchal assembly is the greatest manifestation of the communion and unity of the same Church, in which the patriarch, the father and head of the Church, as well as bishops, priests, religious and other Christian faithful participate in the ministry and governance of the Church according to each one's condition and function. Such an assembly of unity and love must strive to foster a fruitful discussion and exchange of views among all sections of the Christian faithful, under the guidance of the Holy Spirit, in order to arrive at common consensus and basic agreement on cardinal points with the sole intention of the common good of the Church sui iuris. If such a consensus can be reached among the bishops, priests, religious and other Christian faithful who participate in the assembly there would be no difficulty for the synod to convalidate such consensus-decisions and promulgate them as particular law of the same Church. I am of the opinion that any balloting or voting should be considered only as a means to verify the degree of consensus reached in the assembly. Church government cannot be animated by democratic principles alone (democracy functions on the basis of majority-opposition dynamism which is alien

to the Gospel spirit) but by evangelical spirit, mutual respect and a passion for the authentic Catholic doctrine and genuine traditions of one's own Church *sui juris*.

9. The Statutes of the Patriarchal Assembly (c. 145)

The patriarchal assembly, though not a permanent institution, should have its own statutes for its orderly and smooth functioning. The statutes can be drawn up by experts and can be presented to the patriarchal assembly itself for suggestions and recommendations. Nevertheless the statutes need the approbation of the synod of bishops, since the synod is the only competent organ to enact laws for the patriarchal Church. The statutes approved by the synod and promulgated by the patriarch belongs to the category of the particular law of the proper Church. The statutes of a metropolitan assembly approved by the council of hierarchs of a metropolitan Church sui iuris cannot be promulgated by the metropolitan before receiving the written notification from the Holy See of the reception of the acts (c. 167 § 2).

The statutes can contain norms and regulations for the fruitful celebration of the patriarchal assembly. According to the common law at least one presbyter and two lay persons from every eparchy are members of the assembly, but the statutes can establish a higher participation of presbyters and laity. As indicated by the common law it can determine whether or not persons of other Churches sui iruis are to be invited to the patriarchal assembly as well as the number and manner of their participation (c. 143 § 3). Similarly it can decide whether non-Catholic observers are to be invited to the assembly (c. 143 § 4). The common law states nothing about the participation of deacons in the patriarchal assembly. but the statutes can determine this matter.²⁹ Of course, the statues must establish the manner of preparation for the assembly, especially the establishment of pre-assembly commissions and consultative bodies (c. 144 § 2), the procedure for the celebration, etc.

^{29 &}quot;En ce qui concerne les diacres—mentionnés lors du vote d'octobre 1975—rien n'est indiqué dans le texte à ce propos afin de laisser toute décision à ce sujet au ius particulare". Nuntia 7 (1978) 44.

10. The Patriarchal Assembly in Comparison with the General Assembly of the Syro-Malabar Church under the Archdeacon of All India

According to Indian tradition. St Thomas the Apostle ordained sacred ministers including bishops to succeed him in the Christian communities established by him. But we have no means to substantiate this tradition. 30 If ever St. Thomas ordained some bishops in his Church or instituted a hierarchy in India we do not know how and when this hierarchy became extinct. According to a reasonable hypothesis, hierarchical succession in the Indian Church was interrupted as a result of the legislation of the early ecumenical councils and general synods which exclusively reserved the election of bishops to the provincial synod canonically convoked and presided over by the metropolitan. No episcopal consecration was possible without the presence of the metropolitan and two other bishops or at least three bishops with the consent of the metropolitan.31 Therefore the Indian Church of St Thomas Christians in its early years could not have had consecrated bishops without depending on other sister Churches

From a very early period, the St Thomas Christians were receiving their bishops from the Chaldean Church. Clear evidence for India's hierarchical relationship with the Chaldean Church may be had from the seventh century.³² This hierarchical relationship somehow continued until the death of Mar Abraham, the last Chaldean prelate in 1597.

The Chaldean metropolitans, who naturally had a lifelong appointment and must have acquired a certain familiarity

³⁰ P. J. PODIPARA, The Hierarchy of the Syro-Malabar Church, Alleppey 1976, 24; The Thomas Christians, London-Bombay 1970, 30.

See Apostolic Canon 1; Nicaea (325) cc. 4, 6; Antioch (341) cc. 16, 19,
 23; Carthage (419) c. 13; Nicaea II (887) c. 3; Constantinople IV (869-870) c. 22. For detailed analysis, see chapter 1, heading n. 4.1.

³² PODIPARA, The Hierarchy of the Syro-Malabar Church, 27-28; The Thomas Christians, 63-66; cf. E. R. HAMBYE, "Medieval Christianity in India: the Eastern Church", in H.C. Perumalil & E.R. Hambye, Christianity in India, Alleppey 1972, 30-32.

with the customs, culture as well as socio-political life of the St Thomas Christians, were chiefly occupied with the "munus sanctificandi": the celebration of the Holy Mysteries, the ordination of clerics, etc., utilizing much of their time for prayer and asceticism. The effective leader and real head of the Syro-Indian Church was the archdeacon of all India who was always a priest from among the St Thomas Christians and who practically governed the Church except in matters that needed the exercise of episcopal character. In his well-researched doctoral dissertation, Prof. J. Kollaparambil states:

Under the foreign metropolitan, the archdeacon of All-India, as the only infra-episcopal dignitary and the royally privileged national head of the St Thomas Christians, was practically governing the Church of India both in ecclesiastical and civil spheres. True, the metropolitan was the spiritual head of the Church. The archdeacon was only participating the jurisdiction of the metropolitan, but to such a degree that practically nothing except the power of Order remained for the metropolitan. The whole power of jurisdiction was exercised by the archdeacon.³³

The archdeacon was the "ex-officio teacher" of the St Thomas Christians and enjoyed legislative, judicial and administrative powers. In addition to these powers he had many rights and privileges like the administration of the vacant see, presentation of candidates to the Holy Orders, appointment of vicars, enthronisation of bishops, etc. Thus, in India the archdeacon was the royally privileged unifying head of the St Thomas Christians who preserved, protected and promoted the individuality, identity and heritage of this Church, and safeguarded its autonomy and independence, even though the bishops came from Chaldea.

J. KOLLAPARAMBIL, The Archdeacon of All India: A Historico-Juridical Study, Rome 1972, 253-254, cf. also pp. 15 & 261-262; see also A. M. MUNDADAN, History of Christianity in India, Volume 1: From the Beginning up to the Middle of the Sixteenth Century, Bangalore 1989, 180-185.

³⁴ Cf. J. KOLLAPARAMBIL, The Archdeacon of All India, 187-205.

³⁵ Cf. J. KOLLAPARAMBIL, The Archdeacon of All India, 207-235.

When this Church was deprived of its own Eastern hierarchy, the Latin bishops strove to bring the St Thomas Christians into complete subjection and hence tried to do away with the glorious (for them unfamiliar) role of the Indian archdeacon. Thus the institute became extinct with the death of Archdeacon Matthew on 20 March 1706.36

In the early Indian context a provincial synod according to the Eastern tradition was not possible because very often there was only one bishop, and sometimes none. Therefore the Indian Eastern Church of St Thomas developed its own administrative system called vogam or assembly which enjoyed most of the powers of the ancient provincial synods, except the election of bishops. The archdeacon of all India together with the vogam (system of Church assemblies) formed a "Christian republic" with an autonomy equal to an ancient metropolitan Church, if we exclude the election and consecration of bishops. There were three kinds of such assemblies: the parish vogam - assembly of the laymen (generally heads of families) and priests attached to a parish, usually under the presidency of the senior priest; the regional yogam - assembly of the priests and lay representatives of a region which includes at least four parishes, as well as the general vogam which was the assembly of the entire Church of St. Thomas.37

The general yogam was the assembly of the prominent priests and lay representatives of all the parishes of the Church of St Thomas Christians convoked and presided over by the archdeacon of all India. This assembly was the highest authority of the Indian Church of St Thomas Christians, and it enjoyed a kind of legislative, judicial and administrative powers over the whole Church. About the general yogam, Paremmakkal states: "In all the things mentioned above the Malabar churches acted rightly as their forefathers used to do in the past. Matters pertaining to the whole community were not decided by one or two churches: all the churches used to

³⁶ For the history of the archdiaconate under the Latin prelates until its extinction, J. KOLLAPARAMBIL, The Archdeacon of All India, 111-175.

³⁷ Cf. P. PALLATH, Pope John Paul II and the Catholic Church in India, 16-19; Indian Edition of the same book, Changanacherry 1996, 15-18.

assemble together to deal with such matters".³⁸ Podipara summarizes the juridical status of the general assembly as follows:

Matters pertaining to the whole Church or community—religious, social and political— were handled by the representatives of all the churches. It was in these General-Church-Assemblies (the Malabar Church Yogam) that the Archdeacon, the Jathikkukarthavian (the one responsible for the community) as he was popularly called, played his part in the most conspicuous way. The General-Church-Assemblies were practically supreme, and de facto no higher ecclesiastical authority questioned their decisions. The Thomas Christians. therefore formed, as it were a Christian Republic with a head from among themselves. Their bishops who were foreigners were eclipsed by, or were under the shadow of, the Archdeacons. Such was the canonical set up that was developed among the Thomas Christians of the past. Because of this "autonomous state" and "oneness" no foreign heresy or religious controversy had any impact on them, and they were quite content with their Archdeacons in preference to bishops from among themselves.39

Varthamanappusthakam speaks of at least three general assemblies, of which the one held on 25 April 1778 is very important. It is this assembly which decided to send a delegation to Rome under the leadership of Joseph Cariattil to treat the reunion of Mar Thomas VI with the Catholic Church. This general assembly granted the delegation and the mandate to procure whatsoever would be for the benefit of the Malabar parishes and the Church in general. Two candidates for priesthood were sent with the delegates to be admitted in the Propaganda College, Rome. 40 His Eminence Cardinal Castelli, the Prefect of the Congregation at first refused to accept the

³⁸ Varthamanappusthakam, written in Malayalam language by T. Paremmakkal, rendered into English with an Introduction and Notes by P. J. Podipara, OCA 190, Rome 1971, 33.

³⁹ P. J. PODIPARA, "Introduction" to Varthamanappusthakam, 3-4.

⁴⁰ Varthamanappusthakam, 65; cf. also pp. 132, 144 & 146.

bishop. From what Paremmakkal writes about this event, the consciousness of the St Thomas Christians concerning the power and authority of the general Church assembly becomes evident: "If the Cardinal had known the high standing and unity of our people he would have realized that the bishop could not send Syrian boys from Malabar without the consent of our assembly, or, if he sent them, Propaganda could not force our assembly to accept them should it refuse to do so". 41 The general assembly of the St. Thomas Christians became extinct by the end of the eighteenth century when the Church was subjected to the complete jurisdiction of the Portuguese padroado Latin hierarchy.

The general assembly of the Syro-Malabar Church can be considered as an analogous institution to the patriarchal assembly of the new Eastern Code. However there is a very fundamental difference: the Malabar assembly was always a decision-making body, whereas the patriarchal assembly is only a consultative organ to help the patriarch and the synod of bishops. The Malabar assembly exercised legislative, iudicial and administrative powers though in a very limited manner, but the patriarchal assembly does not enjoy such powers. The Malabar assembly did not have any written statutes or a fixed tenure for regular convocation; it was convened when the Church had to affront serious economic. political and religious problems. The theological disputes of the East and the resultant heresies did not affect the Malabar Church, and theologico-liturgical and moral questions were never treated by the Malabar assembly.

The Syro-Malabar Church established the institutes of the archdiaconate of all India and the Malabar general assembly when this Church had neither an indigenous bishop as its head nor a synod according to the Eastern tradition. With the elevation of this Church to the status of a major archiepiscopal Church, it received a "father and head" in the person of the major archbishop and a synod of bishops according to the Eastern tradition for the governance of the Church. The powers of the archdeacon of all India are now exercised by the major

⁴¹ Varthamanappusthakam, 133-134.

archbishop and those of the general assembly by the synod in a more excellent manner. Therefore the ancient Syro-Malabar institutes of all India archdiaconate and general assembly as they existed at that time became irrelevant and superfluous. However, instead of the name Syro-Malabar major archiepiscopal assembly, the expression St. Thomas Christian general yogam or Syro-Malabar general assembly can be used without any difficulty according to the Malabar tradition, and the participation of a sufficient number of lay people and pastors from each eparchy can be assured in the statutes of the assembly.

Christian faithful, though well-versed in economics. politics, engineering, medical science, civil law, literature or any other natural discipline, are not competent to make judgments on faith and morals as well as other liturgicotheological issues. iust as a bishop cannot diagnose a disease or draw up a plan for a hydroelectric project. Bishops, who receive the powers of teaching, governing and sanctifying from God through the action of the Holy Spirit in the episcopal ordination, are really successors of the apostles and true witnesses of the apostolic tradition and apostolic faith. They are supposed to be experts in sacred sciences and diligent dispensers of the Mysteries of God and, as such, the apt persons to make the final judgment on questions of faith. morals and liturgico-theological issues, but seriously evaluating the aspirations and recommendations of the Christian faithful, if they are consonant with the Catholic doctrine and the sound traditions of each Church.

At present some Christian faithful in the Syro-Malabar Church are striving to utilize the ancient institute of yogam to sustain and aliment their anti-ecclesial manoeuvres. In fact, the yogam was not predominantly a lay assembly, but a union of prominent and saintly priests (*Cathanars*), convened and presided over by the archdeacon of all India who was always a celibate priest, and assisted by committed, Churchloving and practicing lay leaders.⁴² Since the yogam had no

⁴² The Syro-Malabar Church cannot be abandoned anymore to that handful of people who together with their "sacred" allies created a catastrophic pandemonium in this Church through their unscrupulous

statutes, it is difficult to determine the nature of assistance rendered by the lay Christian faithful in the general yogam of the time. However, there is no doubt that in the future general *assemblies of the Syro-Malabar Church, the participation of sufficient number of lay Christian faithful who are outstanding in firm faith, good morals and prudence (cf. c. 273 § 4) and who exceed in the necessary knowledge, experience and integrity (c. 408 § 1) are to be ensured, without prejudice to the regulations of common law.

Conclusion

According to the new Eastern Code all and only ordained bishops of the same Church are members of the synod. Consequently priests, deacons, religious and other Christian faithful cannot participate in the synod. In order to ensure the participation of the various sections of the people of God in the ministry and governance of the Church according to each one's status, condition and function, the new Code establishes patriarchal, major archiepiscopal and metropolitan assemblies. Such assemblies are consultative bodies which cannot make juridically-binding decisions because only bishops, who are successors of apostles and authentic witnesses of the apostolic faith and the apostolic tradition through episcopal consecration, are capable of power of governance, especially in matters of faith and morals. However if a common consensus can be reached among the bishops, priests, deacons, religious and other Christian faithful on matters which are not contrary to the Catholic doctrine. the common law of the Catholic Church and the genuine traditions of the same Church sui iuris, such decisions can be convalidated in the synod and can be promulgated as particular law by the patriarch or major archbishop.

machinations and pernicious anti-evangelical antagonism which destroyed its great apostolic dignity and dwindled its vigorous missionary dynamism

Part Two

LOCAL EPISCOPAL BODIES OF THE WEST

Chapter Seven

PARTICULAR COUNCILS OF THE LATIN CHURCH

Introduction

In the first chapter entitled "Local Episcopal Bodies according to the Common Tradition of the Church", we analyzed the origin and development of the different kinds of local episcopal bodies and their powers and functions in the first millennium, based mainly on the canons of the ecumenical councils and the generally accepted local synods. In this chapter, we shall first indicate the scanty references which the general councils (ecumenical) of the second millennium made to particular councils of the Latin Church and then treat their nature, structure, competence and powers according to the Code of Canon Law of 1983 in comparison with CIC 1917.

1. Evolution of Particular Councils in the Second Millennium

As we have seen in the first chapter, the Council of Nicaea I canon five and the Council of Chalcedon canon twenty-eight established that provincial councils should be held twice a year; and Nicaea II canon six ordered the compulsory convocation of a provincial council in each province at least once a year, even if there are some difficulties. The Fourth Lateran Council (1215) repeated the same norm, reminding the metropolitans of the ancient canonical tradition of convoking provincial synods. The purpose of such councils, according to Lateran IV, is the correction of excesses, reform of morals and the punishment of transgressors (judicial function). The sixth constitution of the council states:

As is known to have been ordained of old by the holy fathers, metropolitans should not fail to hold provincial councils each year with their suffragans in which they consider diligently and in the fear of God the correction of excesses and the reform of morals, especially among the clergy. Let them recite the canonical rules, especially those which have been laid down by this general council, so as to secure their observance, inflicting on transgressors the

punishment due. In order that this may be done more effectively, let them appoint for each diocese suitable persons, that is to say prudent and honest persons, who will simply and summarily without any iurisdiction, throughout the whole year, carefully investigate what needs correction or reform and will then faithfully report these matters to the metropolitan and suffragans and others at the next council, so that they may proceed with careful deliberation against these and other matters according to what is profitable and decent. Let them see to the observance of the things that they decree. publishing them in episcopal synods which are to be held annually in each diocese. Whoever neglects to carry out this salutary statute is to be suspended from his benefices and from the execution of his office. until his superior decides to release him.1

The same council also speaks about the judicial power of the provincial councils over the diocesan bishops. The council observed that some bishops are appointing unworthy persons who lack both learning and honesty of behaviour to ecclesiastical benefices. According to the council, a careful inquiry should be made about such abuses each year at the provincial council, and "he who has been found guilty after a first and second correction is to be suspended from conferring benefices by the provincial council, and a prudent and honest person is to be appointed at the same council to make up for the suspended person's failure in this matter [...]. The offence of a metropolitan, however, shall be left by the council to be reported to the judgment of the superior".2 The council does not permit the provincial council to take any judicial action against the metropolitan, the head of the province; the offences of a metropolitan shall be reported to "the superior", namely to the Roman Pontiff or to the proper patriarch. A sentence of suspension leveled against a bishop cannot be relaxed without the authority of the Roman Pontiff or the patriarch.3

¹ TANNER, DEC 1, 236-237; ALBERIGO, COD, 212-213.

² Lateran IV, Constitution 30, TANNER, DEC 1, 249; ALBERIGO, COD, 225.

³ TANNER, DEC 1, 249; ALBERIGO, COD, 225.

Despite the constant canonical tradition of the Church, espoused and reinforced by many ecumenical councils in the first millennium and the Fourth Lateran Council, metropolitans were reluctant to celebrate provincial councils. With this background the general council of Basel (1431-1445) decreed the convocation of provincial councils at least once every three years and stipulated penalties for those who neglect the celebration of councils. A provincial council should be attended by both archbishop and all his suffragans and others who are obliged to take part, after a due summons has been issued to them. If a bishop is prevented by a canonical impediment, he should designate his procurator who participates in the council in his name and reports back what the council decides.⁴ According to Session XV of the Council of Basel, the purpose of provincial councils is as follows⁵:

- 1. Correction of faults and the reform of morals: in the provincial councils "there should be, according to the regulations of the law, a careful investigation into the correction of faults, the reform of the morals of subjects and especially the conduct of bishops in conferring benefices, confirming elections, administering orders, deputing confessors, preaching to the people, punishing the faults of their subjects and observing episcopal synods, and in any other points respecting the episcopal office and the jurisdiction and administration of bishops in spiritual and temporal matters, especially whether they keep their hands clean of the stain of simony, in order that all those who are found to have transgressed in the aforesaid matters may be corrected and punished by the council".
- 2. Careful inquiry about the activities of the metropolitan himself regarding all the points mentioned above: "the council should explain clearly to him his faults and defects, admonishing and imploring him that since he is called and ought to be the father of others, he should altogether desist from such failings". The provincial council can also send a report to the Roman Pontiff or to the proper patriarch a

⁴ TANNER, DEC 1, 474; ALBERIGO, COD, 450.

Our enumeration is based on the fifteenth session of the Council, De conciliis provincialibus et synodalibus, TANNER, DEC 1, 473-476; ALBERIGO, COD, 449-452.

written account of the investigation about the metropolitan so that he may receive punishment and fitting reform from the Roman Pontiff or his patriarch.

- 3. Settlement of disputes: if there are discords, quarrels and feuds among some which could disturb the peace and tranquillity of the province, the holy council should try to pacify them and seek watchfully, as would a dutiful father, for peace and agreement among its sons. If there arise discords between provinces, kingdoms and principalities, the "holy bishops of God should straightway arrange the simultaneous convocation of provincial councils and, in combining their respective counsel and help, strive to banish whatever promotes discord".
- 4. Election of suitable persons for the general (ecumenical) council: in a provincial council that immediately precedes a forthcoming general council, a suitable number of persons can be elected to participate in it in the name of the whole province.

The Fifth Lateran Council (1512-1517) reiterated further the constant tradition of the Church concerning particular councils (provincial) and enjoins that a "provincial council is to be held every three years and we decree that even exempt persons are to attend them, notwithstanding any privilege or custom to the contrary. Those who are negligent in these matters are to know that they will incur the penalties contained in the same canons". The purpose of particular councils, according to the Fifth Lateran Council is the following:

[...] it has also been laid down by the sacred canons that the provincial councils and episcopal synods ought to be established by such persons [patriarchs, primates, archbishops and bishops] for the correction of morals, the settlement and limiting of controversies, and the observance of God's commandments, in order that corruptions may be corrected and those neglecting to do these things may be subjected to canonical penalties. In our desire that these canons be faithfully observed, since it is right for us to be interested in what concerns the christian state, we place a strict obligation on the said patriarchs,

⁶ TANNER, DEC 1, 631-632; ALBERIGO, COD, 607-608.

primates, archbishops and bishops, in order that they may be able to render to God a worthy account of the office entrusted to them, that they order the canons, councils and synods to be observed inviolably, notwithstanding any privilege whatsoever.⁷

The Council of Trent (1545-1563) also treated the question of particular councils (provincial) and urged that "Wherever they have elapsed, provincial councils for the control of conduct, correction of abuses, settling disputes and other matters allowed by the sacred canons are to be restored. Hence metropolitans should not omit to summon a council in their province, either personally or if legitimately hindered through their senior suffragan bishop, within one year at least from the end of the present council [Council of Trentl. and then at least every three years, after the octave of the Easter resurrection of our lord Jesus Christ, or at another time more convenient in the tradition of the province".8 In order that no bishop may be excluded from participating in a provincial synod, the council regulated that "Bishops not subject to any archbishop should choose a neighbouring metropolitan once and for all and are then obliged to take part with the others in his provincial synod and to observe and to see to the observance of all decided at it"9

After presenting the legislation of the ecumenical councils concerning particular councils, it would not be out of place to indicate that some substantial changes took place in the second millennium concerning the celebration of particular councils in the West. In the whole first millennium, metropolitans or primates convoked and presided over particular councils and promulgated laws in harmony with the decrees of the ecumenical councils. But with the Gregorian reform of the eleventh century there came into being the so-called legatine councils. Accordingly a legate of the Roman Pontiff

⁷ TANNER, DEC 1, 631; ALBERIGO, COD, 607.

⁸ Council of Trent, Session 24, c. 2, TANNER, DEC 2, 761; ALBERIGO, COD, 737.

⁹ Council of Trent, Session 24, c. 2, TANNER, DEC 2, 761; ALBERIGO, COD, 737.

convoked, presided, directed and gave legal force to the resulting decrees with his signature. Similarly the Gregorian popes ordered that the pope's permission was necessary to celebrate a particular council. Another important change was made by Pope Sixtus V, with the publication of the bull *Immensa aeterni* of 1587, by which he prescribed the transmission of all conciliar decrees to the Holy See for revision and confirmation. The decrees revised and confirmed by the Holy See obtained legal force after the necessary promulgation.

The decrees and canons of the ecumenical councils which we have examined are completely silent about the celebration of national or plenary councils. Such councils were celebrated very rarely. The procedure for the celebration in the second millennium was almost the same as that of the provincial councils. Before convoking a plenary council, the permission of the pope was necessary. The papal delegate convoked and presided over the councils. The conciliar decrees obtained legal force only after the revision and confirmation by the Holy See and the due promulgation. 12

CIC 1917 title VII of Book 1, entitled De suprema potestate deque iis qui eiusdem sunt ecclesiastico iure participes, deals with Roman Pontiffs (chapter 1), Ecumenical Councils (chapter II), the cardinals of the holy Roman Church (chapter III), the Roman curia (chapter IV), the legates of the Roman Pontiff (chapter V), the patriarchs, primates, metropolitans (chapter VI), and the plenary and provincial

S.C. BONICELLI, I concili particolari da Graziano al concilio di Trento: studio sulla evoluzione del diritto della Chiesa latina, Brixiae 1970, 22-25; P. HINSCHIUS, System des katholischen Kirchenrechts, 647; A. GARCIA Y GARCIA, "Episcopal Conferences in Light of Particular Councils during the Second Millenium", Jurist 48 (1988) 63; SIEBEN, "Episcopal Conferences in Light of Particular Councils During the First Millenium", 55.

[&]quot;[...] Et quoniam eodem concilio tridentino decretum est synodos provinciales tertio quoque anno, dioecesanas singulis annis celebrari debere, id in executionis usum ab iis, quorum interest, induci eadem congregatio providebit. Provincialium vero, ubivis terrarum illae celebrentur, decreta ad se mitti praecipiet, eaque singula expendet et recognoscet". SIXTUS V, the bull *Immensa aeterni*, 11 February 1587, in *Bullarium Romanum*, tom. VIII, 1863, 991.

¹² P. HINSCHIUS, System des katholischen Kirchenrechts, 653-654.

councils (chapter VII). Thus the canons concerning particular councils are collocated in the place where the Code deals with the supreme authority and those who by ecclesiastical law participate in it. This arrangement demonstrates that the power of the particular councils was considered as a participation in the supreme power in accordance with ecclesiastical law.

As we noted, the ecumenical councils of centuries IV-V decreed the celebration of provincial councils twice a year; the councils of centuries VI-XIV fixed their annual celebration and those of centuries XV-XVIII provided for at least every three years. By the nineteenth century, particular councils became practically extinct and there gradually emerged bishops' conferences. In light of this background, CIC 1917 stipulated that a provincial council shall be held at least every twenty years (c. 283).

Vatican II dedicated only one article (CD 36) to synods and councils, but it deals sufficiently with bishops' conferences (CD 37-38). In *Christus Dominus*, the articles concerning intermediary organs like the councils and bishops' conferences are placed under the title, *De episcopis in commune plurium ecclesiarum bonum cooperantibus*. About this structural change K. Mörsdorf remarks that "the synodal element in the sphere of the particular Churches is not a participation in the supreme power, but only a special form of cooperation of the bishops for the common good of several Churches, even though the competence and thus the authority of the synods is not the sum of the authority of the bishops participating but an authority *sui generis*". ¹³ The power evidently derives from the episcopal power which the bishops receive through episcopal consecration.

About the future of councils and synods, the Second Vatican Council expressed the following: "This sacred ecumenical synod expresses its earnest hope that these admirable institutions—synods and councils—may flourish with renewed vigour so that the growth of religion and the

¹³ K. MÖRSDORF, "Decree on the Bishop's Pastoral Office in the Church", in H. Vogrimler, ed., Commentary on the Documents of Vatican II, vol. II, New York 1968, 281.

maintenance of discipline in the various Churches may increasingly be more effectively provided for in accordance with the needs of the times" (CD 36). By this clear statement the Council avoided doubts about the future of particular councils in the context of the new synodal institution of the Latin Church, namely the bishops' conference. In short, Vatican II ensured the functioning of synods and councils in the Church with a new vigour.¹⁴

The Latin Code 1983 modified and reorganized the canons of CIC 1917 concerning the functioning of particular councils in the Latin Church in accordance with the spirit of Vatican II. CIC 1983 placed the canons concerning particular councils and bishops' conferences not under section I (Book II, Part II) entitled De suprema ecclesiae auctoritate (cc. 330-367) as in the former Code, but under section II: De ecclesiis particularibus deque earundem coetibus. Title II of this section named De ecclesiarum particularium coetibus in chapter III deals with particular councils. From this new arrangement of the different titles it is clear that CIC 1983, animated by Vatican II, preferred to locate particular councils in the context of particular Churches, and not in the context of the supreme authority of the Church.

In the following pages we analyze the nature of particular councils and their legislative power according to CIC 1983 canons 439-446 in comparison with CIC 1917 canons 281-291.

2. Nature and Concept of Particular Councils

A council may be described as an assembly of bishops convoked by the competent authority of the Church to discuss and decide ecclesiastical matters concerning faith, morals and canonical discipline. According to canon law, councils can be distinguished into two: ecumenical councils and particular councils. An ecumenical council is the assembly of all the

Synods and councils indicate Eastern and Western terminology. In the East the decision-making episcopal bodies are called synods, while in the West they are named particular councils.

bishops of the universal Church convoked and presided over by the Roman Pontiff, and which makes juridically binding decisions for the universal Church.¹⁵ A council is particular if it is the assembly of the bishops of a "portion" of the universal Church whose decisions bind only within its territorial boundaries. A particular council can be provincial or plenary.

2.1. Plenary Councils

The Latin Code 1917 canon 281 established that "the ordinaries of several ecclesiastical provinces may meet in plenary council". So a plenary council is the assembly of the bishops of several ecclesiastical provinces which makes juridically binding decisions for their territory. According to CIC 1983, a plenary council is the "one which is held for all the particular churches belonging to the same bishops' conference" (c. 439 § 1). A plenary council cannot be identified with a national council. As far as a plenary council can be celebrated for the particular churches belonging to the same conference, it can be either national, supranational or infranational. 16 The former Code did not deal with situations in which there is only one province for a nation or similar geopolitical unit. But according to the new Code, "the celebration of a provincial council in an ecclesiastical province whose boundaries coincide with the territory of a nation" is equated to a plenary council.¹⁷ If the area covered by an ecclesiastical province coincides with the territory of a nation. a provincial council for that area has the same significance as a plenary council since it covers a geopolitical unit similar to what a plenary council would involve. 18 Therefore, the legal procedure for the celebration of plenary councils is

¹⁵ CIC cc. 337-341; cf. CCEO cc. 49-54.

¹⁶ Cf. Communicationes 12 (1980) 256; G. GHIRLANDA, "Concilio particolare" in Nuovo dizionario di diritto canonico, Milano 1993, 221. For different kinds of bishops' conferences, see chapter 8, heading n. 2.1.2.

^{17 &}quot;Norma in § 1 statuta valet etiam de concilio provinciali celebrando in provincia ecclesiastica, cuius termini cum territorio nationis coincidunt". CIC c. 439 § 2.

¹⁸ J. H. PROVOST, "Groupings of Particular Churches", in J. Corriden,

applicable also for such national provincial councils.

2.2. Provincial Councils

Provinces not coterminous with national boundaries are free to conduct provincial councils. Canon 283 of CIC 1917 regulated that in each ecclesiastical province, a provincial council shall be held at least every twenty years. According to the new Code, "a provincial council for the various particular churches of the same ecclesiastical province is to be celebrated as often as it seems opportune in the judgment of the majority of the diocesan bishops of the province" (c. 440 § 1). Therefore, a provincial council is the deliberative assembly of the bishops of a province whose territory is not co-terminus with national boundaries, regularly convoked and presided over by the metropolitan.

3. Procedure for the Celebration of PlenaryCouncils

CIC 1917 canons 281 and 288 and CIC 1983 canons 439 and 441 deal with the conditions and procedures for the celebration of plenary councils. The relevant canons are the following:

CIC 1917 c. 281. The Ordinaries of several ecclesiastical provinces may meet in Plenary Council, but they must first ask the permission of the Holy See, which will appoint a legate to convoke and preside over the council.

CIC 1917 c. 288. In a Plenary or Provincial Council, the president determines the order of business, opens the Council and transfers, suspends or closes it. In the Provincial Council these acts must be done with the consent of the Fathers of the Council.

CIC 1983 c. 439 § 1. A plenary council for all the

T. J. Green & D. E. Heintschel, eds., The Code of Canon Law: A Text and Commentary, New York, 1985, 357.

^{19 &}quot;In singulis provinciis celebretur provinciale Concilium vicesimo saltem quoque anno". CIC 1917 c. 283.

particular Churches of the same bishops' conference is to be celebrated as often as the bishops' conference, with the approval of the Apostolic See, considers it necessary or advantages.

CIC 1983 c. 441. It is the responsibility of the bishops' conference:

- 1. to convene a plenary council;
- 2. to choose a place within the territory of the bishops' conference for the celebration of the council;
- 3. to elect from among the diocesan Bishops a president of the plenary council, who is to be approved by the Apostolic See;
- 4. to determine the order of business and the matters to be considered, to announce when the plenary council is to begin and how it is to last, and to transfer, prorogue and dissolve it.

3.1. Decision to Celebrate

Both CIC 1917 and the new Code establish no fixed time for the celebration of plenary councils. CIC 1917 canon 281 states only that "the Ordinaries of several ecclesiastical provinces may meet in a plenary council". According to the new Code a plenary council can be celebrated "as often as it seems necessary or advantageous to the bishops' conference" (c. 439 § 1). Hence the bishops' conference decides the necessity and utility of the celebration of a plenary council for its territory. Local pastoral necessity or advantage is the reason for celebrating a particular council.

3.2. Approval of the Apostolic See

According to CIC 1917, the Ordinaries of several ecclesiastical provinces who would like to celebrate a plenary council "must first ask the permission of the Holy See". The same norm is practically maintained in CIC 1983 canon 439 § 1: a plenary council cannot be celebrated without the "approval of the Apostolic See". Since a national provincial council, namely a provincial council whose boundaries coincide

with the territory of a nation, is equated with a plenary council, the approval of the Apostolic See is necessary (cf. c. 439 § 2).²⁰ During the *iter* of the Code it was pointed out that the approval of the Holy See is necessary because the plenary council exercises supra-diocesan power (especially legislative) which transcends the power of each bishop and even of the bishops' conference itself.²¹ Therefore, according to the present discipline, the ultimate decision concerning the necessity and utility of a plenary council depends upon the Holy See.²² Since no fixed time is established by the Code for the celebration of plenary councils, the full liberty of both the bishops' conference and of the Apostolic See (to give the approbation) remains intact. The result is that there will never take place a plenary council in the territory of most of the bishops' conferences.

3.3. The Event of Celebration

In comparison with CIC 1917 the new Code leaves ample power to the bishops' conference with regard to the celebration of plenary councils which acts in accordance with

During the formation of the Code, regarding the necessity of the approval of the Holy See, the Secretary of the Commision held that "[...] Non crede poi sia realistico fissare un termine temporale per il Concilio come desidera qualche organo consultivo. Pertanto se non si fissa un termine e si lascia alla libertà delle Conferenze Episcopali, è necessario, volta per volta, che ci sia l'approvazione della Santa Sede, se invece fissato il tempo nel Codice, è implicita l'approvazione della Santa Sede". Communicationes 12 (1980) 256.

²¹ The suggestion of two Consultors, according to which "sufficit ut dicatur in § 1: "[...] prius Apostolica Sede conscia facta. Vel supprimatur requisitum approbationis ex parte Sanctae Sedis, hic et etiam in can. 316", was rejected because "Necesse est ut maneat approbatio, quia agitur de exercenda potestate supradioecesana, praesertim legislativa, quod ambitum potestatis singulorum Episcoporum, immo et ipsius Episcoporum Conferentiae excedit". Communicationes 14 (1982) 192.

[&]quot;Iudicium ultimum de necessitate vel utilitate celebrationis Conciliorum regionalium, vel de Concilio in provincia ecclesiastica cuius termini cum natione coincidunt, Sanctae Sedi pertinet (cfr. can. 314), cuius etiam est recognoscere decreta omnium Conciliorum antequam promulgentur". Communicationes 14 (1982) 192.

its own statutes. The responsibilities of the bishops' conference include:

- 1. Convocation of a plenary council: according to CIC 1917, the Holy See, which gives the permission to celebrate a plenary council, "will appoint a papal legate to convoke the council". But according to the new Code, the bishops' conference itself convokes the council.
- 2. Selection of a place: similarly the bishops' conference selects the place in which to celebrate the council. The conference can select any convenient place within its territory.
- 3. Election of a president: The 1917 Code stipulated that the papal delegate himself presides over the plenary council. The new Code, however, empowered the bishops' conference to elect the president of the council from among its members. The president should be elected from among the diocesan bishops. Therefore, an auxiliary or coadjutor cannot become the president. After the election his name should be communicated to the Holy See for approval. Having obtained the approval of the Apostolic See, the conference can proceed with the celebration of the council. If the Holy See does not approve the elected person, the conference must choose another president.
- 4. Agenda of a plenary council: in CIC 1917, the papal delegate determines the agenda of the council (c. 288), but in the new Code the bishops' conference determines the agenda and the questions to be treated.
- 5. Moreover, the following powers which were exercised by the papal delegate according to CIC 1917 (c. 288) are left to the bishops' conference in the 1983 Code (c. 441 n. 4):
 - to establish the date for the opening;
 - to establish the date for the closing of the council;
 - to transfer the council, if necessary;
 - to prolong it, if necessary; and
 - to dissolve it.

In summary, the bishops' conference exercises direct authority over plenary councils. Canon 441 represents a major shift from canons 281 and 288 of CIC 1917 by transferring to the bishops' conference all the powers hitherto reserved to

the legate of the Apostolic See who convened, presided over, determined the agenda and various matters concerning time, place, duration, suspension, transfer and closing of plenary council.

4. Procedure for the Celebration of Provincial Councils

CIC 1917 c. 284. The metropolitan chooses the place of the council after having consulted all who are entitled to a decisive vote: ordinarily the metropolitan city should be the place, unless there are good reasons why that is inadvisable. If the metropolitan see is vacant, or the metropolitan is legitimately impeded from calling the council, the suffragan bishop who is the oldest in promotion to a suffragan bishopric shall convoke the council. The metropolitan is president of the council, or otherwise the oldest suffragan who takes his place.

CIC 1983 c. 440 § 1. A provincial council, for the various particular Churches of the same ecclesiastical province, is celebrated as often as, in the judgement of the majority of the diocesan Bishops of the province, it is considered opportune, without prejudice to Can. 439 § 2.

§ 2. A provincial council may not be called while the Metropolitan see is vacant.

CIC 1983 c. 442 § 1. It is the responsibility of the Metropolitan, with the consent of the majority of the suffragan Bishops:

- 1. to convene a provincial council;
- 2. to choose a place within the territory of the province for the celebration of the provincial council;
- 3. to determine the order of business and matters to be considered, to announce when the provincial council is to begin and how long it is to last, and to transfer, prorogue and dissolve it.

§ 2. It is the prerogative of the Metropolitan to preside over the provincial council. If he is lawfully impeded from doing so it is the prerogative of a suffragan Bishop elected by the other suffragan Bishops.

The metropolitan, with the consent of the majority of the suffragan bishops exercises the powers enjoyed by the bishops' conference with regard to the plenary councils.23 According to the Code, when law prescribes that in order to perform a juridical act, a superior requires the consent of some college or group of persons, the college or group must be lawfully convoked.24 Provided that a majority of those who must be summoned are present, what is decided by an absolute majority of those present has the force of law. The act is invalid if the superior does not seek the consent or acts contrary to it.25 Therefore, for the celebration of a provincial council the metropolitan has to convoke the suffragan bishops of the province and obtain their consent with a vote of absolute majority. Otherwise the provincial council and its acts would be invalid. Metropolitan with the consent of the majority of the suffragan bishops can do the following things for the celebration of a provincial council:

1. Convocation of a provincial council; CIC 1917 established that in each ecclesiastical province a provincial council shall be held at least every twenty years (c. 283). However, the new law does not fix any time for its celebration,

²³ In the initial canon the phrase "Metropolitae, una cum Episcopis suffraganeis provinciae ecclesiasticae" appeared. [Communicationes 12 (1980) 258]. This was later changed into "Metropolitae, de consensu maioris partis Episcoporum suffraganeorum [...]", because "Necesse est ut requiratur consensus, quia secus norma esset ambigua". Communicationes 14 (1982) 193.

²⁴ For lawful convocation, see c. 166; cf. CCEO c. 948.

^{25 &}quot;Cum iure statuatur ad actus ponendos Superiorem indigere consensu aut consilio alicuius collegii vel personarum coetus, convocari debet collegium vel coetus ad normam ca. 166, nisi, cum agatur de consilio tantum exquirendo, aliter iure particulari aut proprio cautum sit; ut autem actus valeant requiritur ut obtineatur consensus partis absolute maioris eorum qui sunt praesentes aut omnium exquiratur consilium". C. 127 § 1.

so the metropolitan with the consent of the suffragans is completely free to convoke a provincial council at any time taking into consideration the necessity and pastoral utility of the local Church. The approval of the Apostolic See is not required for the decision to hold a provincial council as in the case of plenary councils. According to CIC 1917, a provincial council can be held even in the absence of the metropolitan. Canon 284 states: "If the metropolitan see is vacant, or the metropolitan is legitimately impeded from calling the council, the suffragan bishop who is the oldest in promotion to a suffragan bishopric shall convoke the council". The new Code dropped this provision.

- 2. Selection of a place for the celebration of the council; according to CIC 1917, the metropolitan city should usually be the place, unless there are good reasons why that is inadvisable (c. 284). The CIC 1983 simply empowers the metropolitan with the consent of the suffragans to select any convenient place within the territory of the province.
- 3. Determination of the agenda and other competencies; the metropolitan, with the consent of the suffragans, determine the agenda and the questions to be treated in the council. Similarly he is competent (with the consent of the suffragans):
 - to establish the date for the opening of the council;
 - to determine the date for the closing;
 - to transfer, if necessary;
 - to prolong, if necessary; and
 - to dissolve it.
- 4. The presidency of the provincial council; normally it is the role of the metropolitan to preside over a provincial council. If he is impeded from doing so the suffragan bishops can elect a president from among them.

In comparison with the CIC 1917, the new Code gives greater voice to the suffragan bishops relative to convening a provincial council and determining its location, agenda, etc. Previously they had only to be consulted, now a majority must consent. The metropolitan is really primus inter pares who endeavours to realize the communion and concord of all the

bishops for the increase of faith and the coordination of pastoral action in the province. In the former Code the senior suffragan bishop in order of promotion presided at a provincial council if the metropolitan was impeded from doing so (c. 284). However, according to the new Code suffragans elect the president from among themselves.

From a phenomenological and sociological point of view, a plenary council is greater than a provincial council regarding the ambit of territory, structure, competence, participation, membership, etc. However, the main juridical difference between them consists in the fact that a plenary council needs the approval of the Holy See, while such approval is not required for a provincial council.²⁶ Moreover, a plenary council is organized by the bishops' conference and presided over by a diocesan bishop elected by the conference, whereas a provincial council is convoked and presided over by the metropolitan. Similarly the election of the president of a plenary council should obtain the approval of the Holy See. Since the metropolitan himself presides over a provincial council, no special permission is necessary.

5. Participation in Particular Councils

Three distinct canons regulated participation at particular councils in the former Code: canon 282 on plenary councils and canons 285-286 on provincial councils. In the new Code there is only one canon (c. 443) which summarizes the norms on participation in particular councils. In addition to bishops, *clergy men* were the only other participants in particular councils in the former Code. The revised Code broadens participation considerably, dropping the restriction

^{26 &}quot;[...] nel Codice la differenza tra Concilio plenario e Concilio provinciale era nell'approvazione da parte della Santa Sede, infatti il Concilio provinciale, avendo un termine di tempo stabilito dal Codice, non aveva bisogno dell'approvazione". Communicationes 12 (1980) 256.

²⁷ CIC 1917 c. 282 § 3 states: Alii ex utroque clero viri, forte ad Concilium invitati, suffragio non gaudent nisi consultivo; whereas according to CIC 1983 c. 443 § 3 n. 2: "Superiores maiores institutorum religiosorum et societatum vitae apostolicae numero tum pro viris tum pro mulieribus [...] quae in territorio sedem habent" can be called to the

to males and including religious and lay persons (both men and women).²⁷ According to the new Code, though the decision-making power belongs only to the bishops, a particular council is the common effort of the entire local ecclesial community. The different categories of members and the nature of their participation at particular councils are subsequently described.

5.1. De Iure Members with Deliberative Vote (c. 443 § 1)

These members not only participate by right at the councils but also their votes are counted for the final decision on a given issue. According to CIC 1917 canon 282 §1 the papal delegate exercised a major role in the celebration of councils. As we have indicated above, he convoked and presided over the council and as the participant par excellence he enjoyed also a deliberative vote. Since all the powers exercised by the legate in CIC 1917 concerning the celebration of particular councils are transferred to the bishops' conference by the new Code, there is no question of a papal delegate participating in the council. De iure members who participate with deliberative vote are the following:

- 1. Diocesan bishops
- 2. Coadjutor and auxiliary bishops
- 3. Other titular bishops who fulfill within the territory a special function committed to them by the Apostolic See or by the bishops' conference. CIC 1917 states that "If the titular bishops who are staying in the territory where the council is held, are also summoned by the papal delegate in compliance with his instructions, they should appear at the council, and have a deliberative vote, unless the document of convocation

council. Furthermore according to § 4, "Ad concilia particularia vocari etiam possunt, cum suffragio tantum consultivo presbyteri aliique christifideles [...]".

²⁸ CIC 1917 c. 282 § 1.

^{29 &}quot;Etiam Episcopi titulares, in territorio degentes, si a Legato Pontificio, secundum receptas instructiones, ad Concilium vocentur, adesse debent habentque suffragium deliberativum, nisi in convocatione aliud expresse caveatur". CIC 1917 c. 282 § 2.

explicitly provides otherwise".²⁹ The new Code makes a distinction between titular bishops who exercise a pastoral function within the territory and titular bishops who are merely residing in the territory. Only "titular bishops who fulfill within the territory a special function" are de iure members of a particular council and should be convoked.³⁰ Other titular bishops can be called to particular councils. In a provincial council, titular bishops who exercise within the territory a function committed to him by the bishops of the province may also participate.³¹

4. Those who are equivalent to the diocesan bishops in law. They are not bishops, but are equivalent to the diocesan bishops in law (c. 381 § 2) because they head particular churches equivalent to dioceses (c. 368). These are not explicitly mentioned in the canon, but according to the general understanding they also participate in the council with deliberative vote.³² Since the administrators of vacant dioceses are bound by the obligations and enjoy the power of the diocesan bishops, they also participate in the council with the same rights of a diocesan bishop.³³

5.2. De Iure Members with Consultative Vote (c. 443 §§ 3 & 5)

These members have the right to participate in the council by law itself, but they have only a consultative vote, that is, they do not share in making the final determination of the council's position. Such participants, including experts in liturgy, theology, spirituality and canon law, bring to the council specific expertise, the experience of Catholic faith and the needs of the faithful; and thus influence the participants

³⁰ C. 443 § 1, n. 3: alii Episcopi titulares qui peculiari munere sibi ab Apostolica Sede aut ab Episcoporum conferentia demandato in territorio funguntur.

³¹ Cf. L. CHIAPPETTA, Il codice del diritto canonico, vol. 1, Napoli 1988, 529.

³² Cf. L. CHIAPPETTA, Il codice del diritto canonico, vol. 1, 529; J. H. PROVOST, "Groupings of Particular Churches", 360.

³³ C. 27 § 1; Comunicationes 14 (1982) c. 318, p. 193.

with deliberative vote to make proper decisions for the good of the local Church. The following are members of the council with consultative vote:

- 1. The vicars general and episcopal vicars of all the particular churches in the territory.
- 2. The major superiors of religious institutes and societies of apostolic life: the bishops' conference for the plenary council and the bishops of the province for the provincial council determine the number of men and women religious who can participate in the council. Major superiors of religious institutes and societies with headquarters in the territory elect their representatives according to the number set by the bishops' conference or the bishops of the province.
- 3. Rectors of ecclesiastical and Catholic universities and the deans of faculties of theology and of canon law which are located within the territory.
- 4. Some rectors of major seminaries; their number is determined by the bishops' conference for the plenary council and the bishops of the province for the provincial council. The rectors of the major seminaries which are located within the territory together elect their representatives for the council according to the number fixed by the competent authority mentioned above.
- 5. Cathedral chapters, the presbyteral councils and the pastoral councils; each of these groups can send two of its representatives to the council. They are to be elected in a collegial manner by each of these bodies.

5.3. Optional Members with Deliberative Vote (c. 443 § 2)

As we have indicated above, these are titular bishops including bishops *emeriti* who are living in the territory, but without exercising any pastoral function. They are not members of the council by law itself, but they can be called to the council according to the decision of the competent

^{34 &}quot;Ad concilia particularia vocari possunt alii Episcopi titulares etiam emeriti in territorio degentes; qui quidem ius habent sufragii deliberativi". Canon 443 § 2.

authority. If they are called, they exercise a deliberative vote, that is, their votes are also counted for the final decision of the council.³⁴

5.4. Optional Members with Consultative Vote (c. 443 § 4)

In addition to the various categories of members already mentioned, presbyters and other members of Christian faithful (men and women) can also be called to particular councils. If they are called, they have only a consultative vote, namely they can participate in the discussions like other members of the council but their votes are not counted for the definitive decisions. According to the canon the number of these participants is not to exceed half of the number of those who participate with deliberative vote as mentioned in §§ 1-3 of this canon. The Code does not establish any criterion for the selection of these members. Therefore the bishops' conference (for the plenary council) and the bishops of the province (for the provincial council) can determine the manner of their selection.

5.5. Guests (c. 443 § 6)

These are mere observers without any kind of vote (neither deliberative nor consultative). Regarding the juridical position of the "guests" in particular councils, the commentary Canon Law Letter and Spirit asserts that "From the clear distinction that is made between the terms 'deliberative' and 'consultative' on the one hand, and 'guests' on the other, it is clear that the latter do not have a vote, as such, of any kind. This does not, however, mean that they might not be invited to speak to the assembly if they would wish to do so; on the contrary, at least courtesy would require that they ought to be so invited and, if they accept, that their expressions of

³⁵ The Canon Law Letter and Spirit: A Practical Guide to the Code of Canon Law, prepared by the Canon Law Society of Great Britain and Ireland, London 1996, 249.

opinion or advice be given careful consideration".35 The law also enables the bishops' conference in regard to a plenary council, and the metropolitan along with his suffragan bishops in regard to a provincial council, to invite Catholic Orientals or even non-Catholics as guests or observers, if it seems advantageous to the local Church.36

The participation of the various categories of Christian faithful in the particular councils—clerics, laity, religious and members of the societies of apostolic life—together with their bishops, though with consultative votes, manifests the communal or koinonial dimension and the essential synodal nature of the local Church.³⁷ The distinction between deliberative and consultative vote reflects the hierarchical nature of the Church. The Christian faithful also fulfill their right and obligation to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church (c. 212 § 3) in an eminent way in particular councils.

5.6. Obligation to Participate in Particular Councils

Regarding the obligation to attend at a particular council, CIC 1983 canon 444 states:

- §1. All who are summoned to particular councils must attend, unless they are prevented by a just impediment, of whose existence they are obliged to notify the president of the council.
- §2. Those who are summoned to a particular council in which they have a deliberative vote, but who are prevented from attending because of a just impediment, can send a proxy. The proxy, however, has only a consultative vote.

^{36 &}quot;Ad concilia particularia, si id iudicio Episcoporum conferentiae pro concilio plenario aut Metrpolitae una cum Episcopis suffraganeis pro concilio provinciali expediat, etiam alii ut hospites invitari poterunt". C. 443 § 6.

<sup>Gf. G. GHIRLANDA, "Concili particolari e conferenze episcopali dei vescovi: 'munus regendi' e 'munus docendi'", CC 142/2 (1991) 119-120;
G. D. MUCCI, "Concili particolari e conferenze episcopali", CC 138/2 (1987) 344-345;
cf. also</sup> *ll diritto nel mistero della Chiesa*, vol. 2, Quaderni di Apollinaris 9, Roma 1990, 542.

The celebration of a particular council is an important event in the life of a local Church. Therefore all those who are invited have the obligation to attend the council and thus to contribute for the common good of their local Church. If they are detained by a just impediment, they have to inform the president of the council about it. In the former Code, only the religious who could not attend a provincial council were explicitly bound to inform the council of the reasons for their absence. But according to the new Code, all those who are invited to a plenary council or a provincial council are bound by this obligation.

According to the former Code, persons who were obliged to attend a plenary or provincial council, and who had a deliberative vote, were to send a proxy if they were lawfully impeded. The proxy could be one of the fathers of the council who had a deliberative vote, in which case he could not have a double vote or another person but could have only a consultative vote. The new Code retains the provision for sending a proxy to particular councils, if someone who has a deliberative vote is detained by a just impediment (444 § 2).40 However, no mention is made about sending a council member as a proxy. According to both of the Codes, a person with deliberative vote in a particular council practically looses his deliberative vote if he is impeded from direct participation. In short, those participants with a consultative vote are either

With regard to provincial councils CIC 1917 c. 286 § 4 regulates, "Maiores quoque religionum clericalium exemptarum ac Congregationum monasticarum Superiores, qui in provincia resideant, invitandi sunt, debentque invitati adesse aut impedimentum, quo detinentur, Concilio notum facere [...]".

[&]quot;Qui Concilio plenario aut provinciali interesse debent cum voto deliberativo, si iusto impedimento detineantur, mittant procuratorem et impedimentum probent". § 2: "Procurator, si fuerit unus ex Patribus est votum deliberativum, duplici voto non gaudet; si non fuerit, habet votum dumtaxat consultivum". CIC 1917 c. 287.

⁴⁰ The bishops, as heads of particular Churches, *must* participate in particular councils. Realistically a proxy cannot substitute a diocesan bishop. The use of a proxy is *only permitted* as a lesser evil. In this sense the Code Commission changed "mittant procuratorem" of CIC 1917 into "procuratorem mittere possunt". *Communicationes* 12 (1980) 261.

to attend at the council or their place is vacant; those with a deliberative vote, if impeded, can send a proxy but the proxy has only a consultative vote.

The former Code made some restrictions on leaving a council before its conclusion. According to canon 289, "Once the plenary or the provincial council has been opened, none of those who are obliged to be present may leave without a just cause which must be approved in the plenary council by the papal delegate, or in the provincial council by the fathers of the council". Such restrictions are not seen in the new Code. However, it is evident that the participants have to cooperate in a responsible manner for the good outcome of the council.

6. Legislative Power of Particular Councils

The Latin Code 1917 canon 290 explains the purpose of particular councils: "In plenary or provincial councils are to be discussed and decided matters that serve for the increase of the faith, the guidance of morals, the correction of abuses, the settling of controversies, and the promotion of uniformity of discipline in the respective territory". Regarding the purpose of particular councils, *Christus Dominus* asserts:

From the earliest centuries of the Church, bishops, while in authority over particular Churches, have drawn inspiration from the bond of fraternal love and zeal for the mission to all people which was given to the apostles. Accordingly they have pooled their resources and coordinated their plans to promote the common good and also the good of individual Churches. To this end synods, provincial councils and finally plenary councils were established in which the bishops drew up for the different Churches a uniform procedure to be followed both in the teaching of the truths of the faith and in the regulation of ecclesiastical discipline (CD 36).

According to the council, particular councils should flourish with renewed strength "so that by this means more suitable and efficacious provision may be made for the increase of faith and for the maintenance of discipline in the different Churches as the circumstances of the times require" (CD 36). In keeping

with the ancient tradition and the conciliar magisterium, CIC 1983 canon 445 clearly articulates the competence of particular councils:

A particular council is to ensure that the pastoral needs of the people of God in its territory are provided for. While it must always respect the universal law of the Church, it has power of governance, especially legislative power. It can, therefore, determine whatever seems opportune for an increase of faith, for the ordering of common pastoral action, for the direction of morals and for the preservation, introduction and defence of a common ecclesiastical discipline.

6.1. General Competence

Particular councils, whether provincial or plenary, enjoy ample "power of governance especially legislative power" in a general way in their own territory. The power of governance (munus regendi) is distinguished as legislative, executive and judicial.⁴¹ Therefore particular councils can make legislative, judicial and administrative decisions, but the canon gives particular importance to the legislative power of the councils.

Moreover, in the history of the Church, particular councils always enjoyed the power of authentic magisterium (munus docendi).⁴² Although they do not enjoy infallible teaching authority, the bishops in communion with the head and members of the college, gathered in particular councils, are authentic teachers and instructors of faith for the faithful entrusted to their care. The faithful must adhere to the authentic teaching of particular councils with a sense of religious respect (c. 753).

As denoted by *Christus Dominus* number 36 and CIC 1983 canon 445 the purpose of the particular councils is as follows:

^{41 &}quot;Potestas regiminis distinguitur in legislativam, exsecutivam et iudicialem". Canon 135 § 1.

⁴² Cf. G. GHIRLANDA, "Concili particolari e conferenze episcopali", 118.

- 1. Make provisions for the pastoral needs of the people of God in its own territory;
 - 2. Provide for the increase of faith;
 - 3. Organize common pastoral activity;
 - 4. Direct morals;
 - 5. Promote or protect common ecclesiastical discipline.

Particular councils possess legislative power in order to fulfill their mission. Thus they have general competence to legislate whatever is necessary for the pastoral needs of the Christian faithful, for the preservation and increase of authentic faith and morals and for the promotion of common ecclesiastical discipline in the region.

With regard to competence, particular councils are explicitly mentioned (together with the bishops' conference) only three times in the whole Code of Canon Law. Canon 753 stipulates that whether they teach individually in bishops' conferences or gathered in particular councils, bishops in communion with the head and members of the college, while not infallible in their teaching, are the authentic instructors and teachers of the faith for Christ's faithful entrusted to their care. Canon 823 speaks about the duty and right of the pastors of the Church to safeguard the integrity of faith and morals with regard to writings and to other media of social communi-cation. With regard to a local Church this obligation belongs to the bishops, both as individuals and in particular councils or bishops' conferences (823 §2). Finally, as mentioned in 952 § 1, the provincial council or the provincial bishops' meeting is to determine by decree, for the whole of the province, what offering is to be made for the celebration and application of Holy Mass. Therefore, in the whole Code nothing is explicitly and exclusively reserved to the competence of particular councils. Even in the three instances indicated above, particular councils are mentioned along with bishops' conferences.

6. 2. The Manner of Decision-Making in Particular Councils

The third chapter of the section "Groupings of Particular Churches" (cc. 439-446) does not mention anything about the manner of decision-making in particular councils. Particular councils, whether provincial or plenary, are not permanent institutions and have no statutes. Therefore, they act according to the general norms concerning collegial acts. According to CIC 1983, "In regard to collegial acts, unless the law or the statutes provide otherwise [...], provided a majority of those who must be summoned are present, what is decided by an absolute majority of those present has the force of law. If the votes are equal after two scrutinies, the person presiding can break the tie with a casting vote" (c. 119 n. 2).

As we have seen above, those who must be summoned in a particular council can be grouped into two: de iure members with deliberative vote and de iure members with consultative vote. De iure members with deliberative vote are diocesan bishops, coadjutor bishops, auxiliary bishops and other titular bishops who have been given a special function in the territory, either by the Apostolic See or by the bishops' conference (443 § 1). De iure members with consultative vote are vicars general, episcopal vicars, major superiors of religious institutes, etc. Since the universal law places an obligation to participate in particular councils and since it is the bishops' conference which decides the celebration, it is impossible for a particular council to lack the quorum (50% + 1). It is not clear whether from each group summoned, there should be a majority present or only presence in a general way. However, it is certain that the necessary quorum cannot be reached without the presence of the majority of those who are with a deliberative vote.

If the majority of those who must be summoned are present, a proposal which obtains an absolute majority of the votes has the force of law. Hence in order to make any decision in a particular council, legislative, doctrinal or administrative, an absolute majority of the votes of those who are present are sufficient. For example, in a particular council with fifty members, if twenty-six are present the quorum is fulfilled; and if seventeen members vote for a proposal, it can obtain the force of law after revision by the Holy See.

In the event of a tie after two scrutinies in a particular council, the president of the council has the faculty to determine the issue by a casting vote. However, the president is not obliged to use this casting vote: it is simply a faculty. In such cases it would be expedient that the president acts for a consensus among bishops for the common good of the local Church.

Though according to canon law, decisions can be made on the basis of majority vote, a particular council is not a mere politico-democratic institution, but an institution which should foster communion and concord among the bishops and other Christian faithful of a region or country. Therefore, all should endevour to reach a consensus on important matters for the common good of the Catholic Church in the region. According to G. Ghirlanda, the members of a particular council should strive to arrive at a common consensus, because only this can manifest communion. If such a consensus is not reached, it means that the Holy Spirit is impeded from acting and the communion is not actualized. The voting should be considered only as a means to ascertain the fact that on a particular problem some or all the members have arrived at a consensus. From this point of view the consultative or deliberative nature of the vote is not very relevant. What is aspired for in a particular council, by listening to the word of God and by being docile to the Holy Spirit, is the unanimous consent, which manifests fully the unity and communion of a local Church.43

6.3. Decrees of Particular Councils

According to the tradition of the Church, councils are characteristically legislative bodies and issue laws for their own territory which touch every aspect of ecclesial life. Particular councils can "decree what seems appropriate" for the realization of its aims. The legal decisions of particular councils come under the category of general decrees. According to canon 29,

⁴³ Cf. G. GHIRLANDA, "Concili particolari e Conferenze episcopali", 120.

^{44 &}quot;Decreta generalia, quibus a legislatore competenti pro communitate legis recipiendae capaci communia feruntur praescripta, proprie sunt leges et reguntur praescriptis canonum de legibus. Canon 29.

general decrees by which common prescriptions are issued, by a competent legislator for a community capable of receiving a law, are laws properly speaking and are governed by the prescriptions of the canons on laws.⁴⁴ Therefore, particular councils have to act in accordance with canons 7-22, which deal with the enactment, promulgation and interpretation of laws.

6.4. Decrees of Particular Councils and the Universal Law of the Church

According to canon 445 particular councils possess "the power of governance, especially legislative power, so that with due regard always for the universal law of the Church it can decree what seems appropriate for increasing faith [...]". As we have seen, particular councils have general competence to legislate whatever law for the realization of its aims, but the legislation from particular councils is always subject to the universal law and the official magisterium of the Church. In fact, canon 135 § 2 clearly states that "a law which is contrary to a higher law cannot be validly enacted by a lower legislator". Hence a particular council cannot enact norms contrary to the laws issued by higher authorities, namely the ecumenical councils, the Roman Pontiff and the Apostolic See.

The most recent legislation of an ecumenical council is enshrined in the documents of the Second Vatican Council. In accordance with the spirit of Vatican II, Pope John Paul II promulgated the Code of Canon Law in 1983, Pastor Bonus in 1988 and the Code of Canons of the Eastern Churches in 1990 which together form a single corpus iuris canonici. No lower legislative organ can enact laws contrary to Vatican II, the two

⁴⁵ Cf. The discourse of Pope John Paul II on the occasion of the presentation of the Code of Canons of the Eastern Churches to the Synod of Bishops on 25 October 1990, in L'Osservatore Romano 27 October 1990, English tr. in C. Gallagher, ed., The Code of Canons of the Oriental Churches: An Introduction, 13-14.

⁴⁶ Cf. Code of Canon Law Annotated, eds., E. Caparros, M. Thériault, & J. Thorn, Montréal 1993, 337; Il diritto nel mistero della Chiesa, vol. 2, 541-542.

Codes of canon law and *Pastor bonus* promulgated by the pope. The legislation of particular councils also should respect the powers and functions of the diocesan bishops in their dioceses.⁴⁶

According to general understanding, universal laws are those which have been enacted by those who have legislative power for the entire church such as the pope or ecumenical council for the universal Church. All persons for whom universal laws were passed are bound by them everywhere.⁴⁷ Universal laws need not bind every single member, but "all persons for whom universal laws were passed".⁴⁸ As is evident, the laws of particular councils belong to the category of "particular laws" and bind only those persons who have a domicile or quasi-domicile within the territory of the council and who are actually present there.⁴⁹

As we have seen above, besides making laws, particular councils also enjoy *munus docendi*. However, the magisterium of particular councils cannot run contrary to the authentic and universal magisterium of the Roman Pontiff and the college of bishops (cf. cc. 749-752).

6.5. Review by the Apostolic See

After having concluded a particular council, all the decrees and acts are to be sent to the Holy See for review. The purpose of the *recognitio* is to assure that the decisions of particular councils are not contrary to the universal law and the magisterium of the Roman Pontiff and the college of bishops, but in conformity with them. The Holy See provides for the modification of decisions if they are contrary to the universal law of the Church. CIC 1917 states that "on the conclusion of the plenary and the provincial councils, the

⁴⁷ "Legibus universalibus tenentur ubique terrarum omnes pro quibus latae sunt". Canon 12 § 1.

⁴⁸ For example, a universal law made by an ecumenical council or the pope for bishops binds all and only the bishops of the Catholic Church everywhere in the world.

^{49 &}quot;Legibus conditis pro peculiari territorio ii subiciuntur pro quibus latae sunt, quique ibidem domicilium vel quasi-domicilium habent et simul actu commorantur, firmo praescripto can. 13". Canon 12 § 3.

president shall submit all the acts and decrees to the Holy See, and these shall not be promulgated until the Sacred Congregation of the Council has considered and approved the same" (c. 291 § 1). The new Code (c. 446) substantially reiterates the same norm:

When a particular council has concluded, the president is to ensure that all the acts of the council are sent to the Apostolic See. The decrees drawn up by the council are not to be promulgated until they have been reviewed by the Apostolic See. The council has the responsibility of defining the manner in which the decrees will be promulgated and the time when the promulgated decrees will begin to oblige.

According to the canon, at the conclusion of a particular council, whether provincial or plenary, all the acts should be sent to the Apostolic See for review. The former Code clearly states that the "Sacred Congregation of the Council" is competent to consider and approve the decrees, but the new Code does not specify which dicastery of the Roman Curia is competent to receive the acts and review them. According to Pastor Bonus number 82, the Congregation for Bishops deals with matters pertaining to the celebration of particular councils and examines the decrees which require the recognitio of the Apostolic See. However, the recognitio of the decrees made by particular councils in the mission territories is the competence of the Congregation for the Evangelization of Peoples. 51

The recognitio of the Holy See normally consists in a

[&]quot;Congregatio ea absolvit, quae ad celebrationem Conciliorum particularium necnon ad Episcoporum Conferentiarum erectionem atque earundem statutorum recognitionem attinent; acta huiusmodi coetuum recipit atque decreta, quae recognitione egent, collatis consiliis cum Dicasteriis, quorum interest, recognoscit". Pastor bonus Art. 82.

^{51 &}quot;Eidem subsunt territoria missionum [...] et pro quibus ea omnia agit [...] quae Congregatio pro Episcopis intra suae competentiae ambitum exercet". Pastor bonus Art. 89.

⁵² L. CHIAPPETTA, Il codice di diritto canonico, vol. 1, 532.

simple approval of the decrees made by a particular council. This approval does not confer any special juridical force on the decisions. Juridically, the acts remain the collegial exercise of the jurisdictional power of the bishops assembled in a council. However, it is clear that the pontifical recognitio confers on them a superior authority from a moral perspective. The recognitio can also include changes, insertions and deletions. If the Holy See were to make any substantial change in the decisions of a council, the result would be the imposition of a discipline on a local church which the bishops had not voted to assume. For in the "review" of the decrees such changes would have been made which were not the work of the council in question yet would be promulgated with the authority of the council. 53

6.6. Promulgation of the Decrees

A law comes into existence when it is promulgated (c. 7). Decrees of particular councils are properly laws and they are to be officially promulgated in order to have obligatory force. Though the decrees of the councils are to be reviewed by the Holy See, they are promulgated by the authority of the council itself. According to both of the Codes, the council itself is to define the manner of promulgation of its decrees and the time at which the promulgated decrees begin to oblige. Normally, particular laws begin to bind one month from the date of promulgation, unless another time period is determined in the law itself (c. 8 § 2). But the council can decide another

⁵³ Cf. J. H. PROVOST, "Groupings of Particular Churches", 362. Pope Benedict XIV in his *De Synodo Dioecesana*, Liber III, Capitulum III explicitly stated that review (*recognitio*) was to include corrections to the text adopted by the bishops. But according to the present ecclesiological vision it does not seem that the Holy See would make any substantial change in the decrees, without consulting the bishops concerned. Most probably in the case of a decree contrary to the universal law of the Church, it would be sent back to the bishops themselves in order to be modified by them.

⁵⁴ "[...] ipsimet autem Concilii Patres designent et modum promulgationis decretorum et tempus quo decreta promulgata obligare incipiant". CIC 1917, c. 291 § 1. "[...] ipsius concilii est definire modum promulgationis decretorum et tempus quo decreta promulgata obligare incipiant". CIC 1983 c. 446.

time limit for the entering into vigour of its decrees.

6.7. Obligatory Force of Laws

According to CIC 1917 canon 291 § 2, "The decrees of a plenary or provincial council, after their proper promulgation, bind all persons in the respective territory, and the Ordinaries of the dioceses cannot dispense from them except in individual cases and for a just cause". Canon 447 of the new Code regulates that the "council has the responsibility of defining the manner in which the decrees will be promulgated and the time when the promulgated decrees will begin to oblige". The decrees of a plenary or provincial council whether legislative, administrative or doctrinal, after their proper promulgation and vacatio legis fixed by the council, bind all persons - laity, religious, clergy, bishops and the metropolitans — in the respective territory in accordance with the norms on ecclesiastical laws as stipulated in canons 7-22. The decrees of a particular council, as we have seen above. come under the category of particular laws and thus they are territorial and not personal (c. 13 § 1). So these laws affect only those persons who have a domicile or quasi-domicile in the territory of the council and likewise are actually present there (c. 12 § 3). Normally, travelers are not obliged by the laws of particular councils, whereas transients are bound by them (c. 13 §§ 1-2).

The local ordinary can dispense from the laws of plenary or provincial councils as often as he judges that a dispensation will contribute to the good of the faithful.⁵⁵ According to the principle of canon 135 § 2, a law which is contrary to a higher law cannot be validly enacted by a lower legislator. Therefore, the diocesan bishops cannot enact laws contrary to the decrees of particular councils, rather they should adapt the already existing laws according to the spirit of their decrees.

^{55 &}quot;Ordinarius loci in legibus dioecesanis atque, quoties id ad fidelium bonum conferre iudicet, in legibus a Concilio plenario vel provinciali aut ab Episcoporum conferentia latis dispensare valet". CIC 1983, c. 88.

Conclusion

Councils and synods have always existed in the Church. The Second Vatican Council expressed the desire that the councils and synods should flourish with new vigour. In accordance with this desire, the new Code of Canon Law also established sufficient norms for the celebration of particular councils, both provincial and plenary, modifying the canons of CIC 1917 wherever necessary. Perhaps the most important novelty of the new Code with regard to the celebration of plenary councils may be the shift of powers from the central organ to the local level. All the powers enjoyed by the papal legate in the former Code are transferred to the bishops' conference in the new one. Particular councils have general competence to legislate whatever is necessary for the increase of faith and moral life, for the organization of common pastoral activity and for promoting or protecting common ecclesiastical discipline, in harmony with the official magisterium and the universal law of the Church.

Chapter Eight BISHOPS' CONFERENCES OF THE LATIN CHURCH

Introduction

In the last chapter, while analyzing the evolution of particular councils in the second millennium, we have also seen the gradual decadence of such councils in the Western Church because of various reasons. The collegial or synodal activity which was moribund in the West made a new start only in the bishops' conferences. These have now developed into a hierarchical institution and thus been given the chance for extensive legal activity.1 In the words of Cardinal Ratzinger, "Historically it is no doubt that the role of synods in the governance of the Church in the West had undergone a progressive diminution in the course of centuries, especially as administrative decision-making became exercised increasingly by the Apostolic See. This process, though not always without some advantages for local Churches. brought with it an obfuscation of the principle of episcopal collegiality. which was fortunately rediscovered in the theological ressourcement of this century and came to a kind of fruition at the Second Vatican Council" 2

The principle of episcopal collegiality, which came to the fore in this century and took a definite turn with the Second Vatican Council, is manifested in an institutional way in the bishops' conferences. In this chapter we analyze briefly the origin and the gradual development of bishops' conferences, their nature and purpose, as well as their structure and organization. Then we proceed to a detailed exposition of the legislative power of the bishops' conference listing all the instances for which according to the Code of Canon Law

¹ K. MÖRSDORF, "Decree on the Bishop's Pastoral Office in the Church", 288-289.

² J. RATZINGER, "Le funzioni sinodali della Chiesa: l'importanza della comunione tra i Vescovi", L'Osservatore Romano, 12 gennaio 1996, 4.

the bishops' conference can legislate. We also examine whether the conference has any judicial and electoral powers.

1. Origin and Development of Bishops' Conferences

The origin of the bishops' conference can be traced back to the spontaneous assembly of bishops in Belgium (1830) and in Germany (1848) in the first half of the nineteenth century. Since 1869, the German bishops have met annually in Fulda. The bishops of Bavaria had an annual meeting in Freising beginning with the year 1850.3 The bishops of Austria have met in Vienna since 1849; and on 3 March 1891 the Austrian bishops' conference received the approbation of Pope Leo XIII with a recommendation for annual meetings. Similar bishops' conferences sprang up in various nations such as in Spain, Ireland, Portugal, France, Italy and in Latin American countries. Pope Leo XIII encouraged such conferences and approved them as a mode of promoting the regularity and unity of ecclesiastical discipline.

³ P. HUIZING, "The Structure of Episcopal Conferences", The Jurist 28 (1968) 164; A. ANTON, Le conferenze episcopali: instanze intermedie?, Milano 1992, 48-49; G. FELICIANI, Le Conferenze episcopali, Bologna 1974, 15-22; K. RAHNER, "On Bishops' Conferences", Theological Investigations, vol. 6, Baltimore 1961, 372-373; W. AYMANS, Dassynodale Element in der Kirchenverfassung, München 1970, 21-22.

^{4 &}quot;Haec igitur et huiusmodi capita rerum graviora in deliberationem veniat per annos Episcoporum Congresus, quos placet inducere". LEO XIII, "In ipso supremi", in *Leonis XIII*, pontificis maximi acta, vol. XI, Romae 1892, 42.

⁵ Cf. G. FELICIANI, Le conferenze episcopali, 25-40; A. ANTON, Le conferenze episcopali: istanze intermedie?, 51-57.

⁶ Concerning the regional episcopal conferences of Italy, the Pope writes: "In ciascuna delle mentovate regioni procureranno i vescovi di convenire insieme almeno una volta l'anno per appianare e risolvere con mutuo consiglio la difficoltà, che incontrano nel governo delle rispettive diocesi, per promuovere in tutto la regolarità e uniformità della ecclesiastica disciplina, e per emettere, ove le circostanze lo richiedessero, atti collettivi di qualsiasi specie". LEO XIII, "Alcuni arcivescovi", in *Leonis XIII, pontificis maximi acta*, vol. IX, Romae 1890, 185.

1.1. Causes of Origin

The remote context of the origin of the bishops' conference is the tendency of centralization and the subsequent concentration of power and Church government in the Holy See, culminating in the definition of the dogmas of Roman primacy and infallibility of the pope as decreed by the First Vatican Council. This process of centralization resulted in the emergence of one and the same uniform legislation for the whole Church; effective control of the conciliar activity in different levels of ecclesial life; and notable reduction in the competence of diocesan bishops in the legislative sphere. The continuous decadence of conciliar activity in the Western Church was a negative reason for the origin of bishops' conferences. According to Huizing:

Canon law knew only of regional or provincial synods. Regional synods were extremely closely tied to the Roman curia. They might not be held without the previous approval of the curia, a pontifical legate was to preside, and their decrees had no force until their revision and approval by the curia. What is more in some countries civil law prohibited the holding of episcopal synods without the previous approval of the civil authority. For these reasons, informal meetings, different from synodal meetings of bishops took the place of formal councils.⁸

In the beginning, the bishops' conference offered the bishops of a nation the opportunity to assemble in a short time, free from all the juridical formalities, to discuss and consult on urgent problems of a nation. About the origin and utility of conferences Rahner writes:

Free discussions by individual bishops with one another at bishops' conferences are effective without any participation by the Roman See, as long as they remain within the limits of that jurisdiction within which every bishop can arrive at decisions without any special express permission from Rome in virtue

⁷ A. ANTON, Le conferenze episcopali: istanze intermedie?, 34-35; Cf. also K. RAHNER, "On Bishops' Conferences", 372.

⁸ P. HUIZING, "The Structure of Episcopal Conferences", 164-165.

of his potestas ordinaria which makes him more than a mere official of Rome [...]. In addition the episcopal conferences are not bound by the prescriptions of CIC c. 281-291 concerning the methods of convocation and procedure of plenary and provincial synods, and are in this way much more easily able to accommodate themselves to the circumstances of the place, the needs of the time, and the nature of matter under discussion, and so are also technically easier to organize.9

Moreover, in some countries the civil authorities also intervened in the conciliar activity of the local Church. For example in Spain in 1590 Emperor Philip II prohibited the celebration of councils without the royal permission and required the presence of a royal delegate in the conciliar assembly as well as royal approbation of the results. Thus Ghirlanda is right in affirming that assemblies of bishops began in the Church because of the restrictions imposed on the celebration of particular councils either by the Holy See or by the local civil authority.

The immediate and primary reason for the origin of bishops' conferences was the rapid cultural, socio-political and economic changes of the nineteenth century. The revolutionary changes at the beginning of this century such as the separation of Church and state, the secularization of state, the phenomenon of rapid socialization, the changes in the family, social, and religious life with its specific problems, along with the resurrection of the spirit of nationalism confronted the Church with serious problems that necessitated coordination and cooperation of all bishops on a national level. Therefore, bishops of the same nation that had the same religious and socio-cultural ethos joined together for deliberation.¹²

⁹ K. RAHNER, "On Bishops' Conferences", 374.

A. GARCIA Y GARCIA, "Episcopal Conferences in Light of Particular Councils during the Second Millenium", 66-67, 1939, 401

¹¹ G. CHIRLANDA, Conferenza dei vescovi", Nuovo dizionario di diritto canonico, a cura di C. C. Salvador, Velasio de Paolis & G. Ghirlanda, Milano 1993, 252.

¹² A. ANTON, Le conferenze episcopali: istanze intermedie?, 40-48; G. FELICIANI, Le conferenze episcopali, 135-148.

The scope of such assemblies was mutual consultation about the new problems which they had in common. Different from conciliar meetings, such assemblies lacked legislative power. The bishops might bind themselves by mutual consent. They were able to sanction the decrees which they passed together through their own diocesan laws. But canonically obliging laws of the national bishop's meetings were not recognized by the common law. Thus the bishops of a nation assembled to consult and inform each other, and such conventus episcoporum, therefore, constituted an organ of coordination and collaboration on general politicoecclesiastical problems which necessitated common pastoral action in one or more nations. 14

1.2. Bishops' Conferences and CIC 1917

Though several national bishops' conferences developed all over the world even with the recognition of Roman Pontiffs, such conferences did not find recognition in CIC 1917. Titulus VII, Liber Secundus, is dedicated to De Suprema potestate deque its qui eiusdem sunt ecclesiastico iure participes. As we have seen in the last chapter, Caput VII, Titulus VII, deals with De conciliis plenariis et provincialibus (cc. 281-291). The only canon that can be connected with bishops' conferences is canon 292 §1, concerning the gathering of bishops under the metropolitan for mutual consultation:

Unless otherwise provided for by the Apostolic See for special areas, the metropolitan, or, if there is no metropolitan, the senior of the suffragan bishops as provided for canon 284, will see to it that at least once every five years, local ordinaries come together at a set time at the residence of the metropolitan, or another bishop of the same province with this purpose: that taking counsel together, they may inquire into what is to be done in the dioceses for the advancement of religion, and to prepare those things which should be discussed in future provincial councils. 15

¹³ Cf. P. HUIZING, "The Structure of Episcopal Conferences", 165.

¹⁴ Cf. A. ANTON, Le conferenze episcopali: istanze intermedie?, 48.

This canon does not directly deal with bishops' conferences. The conferences already existing before the promulgation of the Code usually embraced several provinces or an entire nation. Similarly, after the Code, conferences developed in a national direction and not in the direction of provincial meetings. Then too, bishops' conferences were held annually and not every five years. 16 However, according to some scholars the canon indirectly implies the existence of bishops' conferences. For the first time in ius commune, the principle of obligatory consultative meetings or conventus of ecclesiastical provinces was applied, admitting via facti the insufficiency of provincial councils celebrated every twenty vears to resolve the urgent problems of the Church on the local level.¹⁷ The canon also anticipated exceptions: "Unless otherwise provided for by the Apostolic See for special areas". It confirmed explicitly the norms emanated from popes for different national conferences and foresaw the possibility of similar norms for other countries.18 At that time in some countries like Belgium, the province coincided with the nation and in such cases the provincial conventus was equal to the national. 19 Thus in reality, the bishops' conferences found their juridical recognition, but with a precise and important limitation: the Holy See did not intend to

[&]quot;Nisi aliter pro peculiaribus locis a Sede Apostolica provisum fuerit, Metropolita eoque deficiente, antiquior e Suffrageneis ad normam can. 284, curet ut Ordinarii locorum, saltem quinto quoque anno, stato tempore apud Metropolitam aliumve Episcopum comprovincialem conveniant, ut, collatis consiliis, videant quaenam in dioecesibus agenda sint ut bonum religionis promoveatur, eaque praeparent de quibus in futuro Concilio provinciali erit agendum". CIC 1917 c. 292 § 1.

¹⁶ Cf. P. HUIZING, "The Structure of Episcopal Conferences", 166; H. MÜLLER, "The Relationship Between the Episcopal Conference and the Diocesan Bishop", The Jurist 48 (1988) 111; K. RAHNER, "Sulle conference episcopali", in Nuovi saggi, vol. 1, Roma 1968, 608; W. AYMANS, Das synodale Element in der Kirchenverfassung, 22-23.

¹⁷ Cf. A. ANTON, Le conferenze episcopali: istanze intermedie?, 66 & 68.

¹⁸ G. FELICIANI, Le conferenze episcopali, 169; A. ANTON, Le conferenze episcopali: istanze intermedie?, 66.

¹⁹ A. ANTON, Le conferenze episcopali: istanze intermedie?, 68.

recognize with a norm of canon law the national character of conferences. 20

By making plenary councils facultative without prescribing any fixed period of celebration and making provincial councils obligatory only once every twenty years, the Code paved the way for more bishops' conferences. After the Code and especially after the Second World War, bishops' conferences sprang up everywhere in the world with statutes, permanent secretariats, working committees and other organs having the recognition of popes.21 Their purpose remained always the same: mutual consultation on common problems. As Huizing observes, "The essential impetus for the development of national and even international conferences was, and is, not the necessity for national and international canonical legislation, but the necessity for coordinated, unified pastoral activity, communication and instruction. Catholic action, social help and aid, assistance for developing countries, missionary activity, communication with other religions, and governments".22

1.3. Vatican II and the Status of Bishops' Conferences

Though Sacrosanctum concilium promulgated on 4 December 1963 recognized the existence of bishops' conferences and assigned to them certain well-defined tasks, 23 it was only with the promulgation of Christus Dominus on 28 October 1966 that the national bishops' conferences received the official status of an ecclesiastical institution. The third chapter of Christus Dominus deals with De episcopis in commune plurium ecclesiarum bonum cooperantibus. The first section of this title in numbers 36-38 treats Synodi, concilia et praesertim episcoporum conferentiae. The terms

²⁰ G. FELICIANI, Le conferenze episcopali, 171; M. BONET, "The Episcopal Conference", Concilium (October 1965) 26.

²¹ Cf. A. ANTON, Le conferenze episcopali: istanze intermedie?, 69-86; G. FELICIANI, Le conferenze episcopali, 273-306.

²² P. HUIZING, "The Structure of Episcopal Conferences", 166.

²³ Cf. SC 22 (2), 36 (2-4), 39, 40 (1), 44, 63, 79, 107, 119, 120, 128.

synodus and concilium are used side by side, a practice which does not imply a difference in meaning but only the use of both Eastern and Western terminology. Vatican II does not speak at length about synods and councils but simply mentions them and manifests the desire that "they may flourish with new vigour" (CD 36). Thus CD ensured the existence of provincial and plenary councils of the Latin Church.

Christus Dominus in article 37 declares that the usefulness of the bishops' conference was proved by the fruitful apostolate of already existing conferences in different countries and continued that "it would be in the highest degree helpful if in all parts of the world the bishops of each country or region would meet regularly, so that by sharing their wisdom and experience and exchanging views they may jointly formulate a programme for the common good of the Church". Article 38 provides the legal framework of the bishops' conference, namely its structure. membership, statutes. quorum, decisive majority, etc. Thus, both systematically and effectively, the decree Christus Dominus transformed conferences from unofficial meetings into instances framed by the Church's constitutional law; from voluntary assemblies into coetus which were now obligatory in terms of both establishment and participation; from meetings which were heterogeneous in form and composition into essentially homogeneous conventus; and from organisms of merely moral authority into institutions capable of juridically binding deliberations, even if these were limited to specific matters and under rigorous conditions.24

1.4. Bishops' Conferences and the CIC 1983

The basic norms established by Christus Dominus concerning bishops' conferences have been revised and inserted into the new Latin Code with some redactional changes and slight modifications. Title two of section II De Ecclesia constitutione Hierarchica is called "Groupings of Particular Churches". This title is further divided into four

²⁴ G. FELICIANI, "Episcopal Conferences from Vatican II to the 1983 Code". The Jurist 48 (1988) 12.

chapters. The first three chapters deal with ecclesiastical provinces and ecclesiastical regions (cc. 431-434), metropolitans (cc. 435-438) and particular councils (cc. 439-446) respectively. The fourth chapter is dedicated to *De Episcoporum Conferentiis* which attends to the various aspects of bishops' conferences such as their establishment (cc. 448-449), membership (c. 450), statutes (c. 451), internal organization and meetings (cc. 452-454) and finally the legislative power (cc. 455-456). In the following pages, we examine the different aspects of the bishops' conferences on the basis of CD 37-38 and CIC canons 447-456, focusing especially on the legislative power.

2. The Nature and Purpose of Bishops' Conferences

2.1. Description of Bishops' Conferences

According to CD 38 (1), "An episcopal conference is a kind of assembly in which the bishops of a certain country or territory exercise their pastoral office in collaboration, the better to promote the good which the Church offers to people, and especially through forms and methods of apostolate carefully designed to meet contemporary conditions". ²⁵ Canon 447 repeats the conciliar description substantially but with a significant corrective. According to CD, the bishops "exercise their pastoral office in collaboration" (munus suum pastorale coniunctim) in conferences; but the canon limits this exercise to "certain pastoral offices" (quaedam munera pastoralia). ²⁶ The canon is as follows:

^{25 &}quot;Est episcoporum conferentia veluti coetus in quo sacrorum antistites cuiusdam nationis vel territorii munus suum pastorale coniunctim exercent ad maius bonum, quod hominibus praebet ecclesia, provehendum, praesertim per apostolatus formas et rationes occurrentibus aetatis adiunctis apte compositas". CD 38 (1).

²⁶ In fact in the initial canon, in harmony with Christus Dominus "munus suum pastorale" appeared, but later it was changed into "munia quaedam pastoralia". Communicationes 12 (1980) 264; cf. G. FELICIANI, "Episcopal Conferences", 15; "Le conferenze episcopali nel codice di diritto canonico del 1983", The New Code of Canon Law. Proceedings of the 5th International Congress of Canon Law, Ottawa 1986, 498; F. UCCELLA, "Le conferenze episcopali nel nuovo codice di diritto canonico: prime riflessioni", DE 97 (1986) 105.

The bishops' conference, a permanent institution, is the assembly of the bishops of a country or of a certain territory, exercising together certain pastoral offices for Christ's faithful of that territory. By forms and means of apostolate suited to the circumstances of time and place, it is to promote, in accordance with the law, that greater good which the Church offers to mankind.²⁷

2.1.1. The Bishops' Conference is a Permanent Institution

The canon qualifies the bishops' conference as a permanent institution (institutum permanens). The permanent juridical condition of the conference presupposes its continued existence as a juridical institution with its own personality, whether or not its members are assembled.²⁸ The general assembly of all the members of the conference takes place only once a year according to common law. Therefore, the conference is not always in act. Similarly the members may be changed because of retirement, death or the ordination of new bishops. Even then the conference is a permanent institution because it is endowed with stable organs like the president, the permanent council, secretary general and various episcopal commissions and offices.²⁹

2.1.2. Assembly of the Bishops of a Country or Territory

According to CD 38 (1), the bishops' conference is an assembly of the bishops of a certain country or territory (cuiusdam nationis vel territorii). Accordingly, there is the

^{27 &}quot;Episcoporum conferentia, institutum quidem permanens, est coetus Episcoporum alicuius nationis vel certi territorii, munera quaedam pastoralia coniunctim pro christifidelibus eius territorii exercentium, ad maius bonum provehendum, quod hominibus praebet Ecclesia, praesertim per apostolatus formas et rationes temporis et loci adiunctis apte accommodatas, ad normam iuris". CIC c. 447.

²⁸ Cf. Code of Canon Law Annotated, 339.

^{29 &}quot;[...] la Conferenza Episcopale è un organo permanente perché ha un Segretariato permanente e delle Commissioni stabili; può avere perciò personalità giuridica ed essere sogetto di diritti e di doveri". Communicationes XII (1980) 263; cf. also L. CHIAPPETTA, Il codice di diritto canonico, vol. 1, 535.

possibility of national regional and international conferences, but the council shows a clear preference for national conferences. CD 38 (5) permits also international conferences when special circumstances require it, subject to the approval of the Apostolic See. Thus according to CD, three types of bishops' conferences are possible: regional, national and supranational.³⁰ The motu proprio *Ecclesiae Sanctae* further specified that "bishops' conferences of many nations or international conferences can be established only with the approval of the Apostolic See, whose duty it will be to lay down special laws governing them. Whenever actions or procedures are being undertaken by the conferences which have an international character the Holy See should be informed beforehand".³¹

CIC makes the preference shown in CD for national conferences a general juridical norm, but permits the Apostolic See to establish infranational or international conferences in particular circumstances. Canon 448 states:

- § 1. As a general rule, the bishops' conference includes those who preside over all the particular Churches of the same country, in accordance with Can. 450.
- § 2. A bishops' conference can, however, be established for a territory of greater or less extent if the Apostolic See, after consultation with the diocesan bishops concerned, judges that circumstances suggest this. Such a conference would include only the bishops of some particular Churches in a certain country, or those who preside over particular Churches in different countries. It is for the Apostolic See to lay down special norms for each case.

³⁰ Cf. K. MÖRSDORF, "Decree on the Bishops' Pastoral Office", 286; R. SOBANSKI, "The Theology and Juridical Status of Episcopal Conferences at the Second Vatican Council", The Jurist 48 (1988) 96; G. FELICIANI, Le conferenze episcopali, 487-489; W. AYMANS, Das synodale Element in der Kirchenverfassung, 34-36.

³¹ PAUL VI, Ecclesiae Sanctae, n. 41 § 4, AAS 58 (1966) 774.

According to the general rule, the conference must be national in that it includes all and only those who preside over the particular Churches of the same country. Thus every nation must have only one bishops' conference. Exceptions to this general rule are infranational conferences which include only the bishops of some particular Churches in a certain country, and international conferences, which incorporate those who preside over particular Churches in different countries. The precise details of the composition and operation of these exceptional bishops' conferences are to be set forth in norms provided by the Holy See. Generally, infranational and international conferences are not bishops' conferences as such, but are only "assemblies of bishops" which gather together for consultation and coordination.32 Therefore. such "conferences" do not enjoy the juridical powers and competencies determined by the common Code for the national conferences. Our analysis enables us to indicate three possible kinds of conferences:

- 1) National conferences, namely the gathering of the bishops of all the particular Churches of a nation. This is the general juridical norm and only such national conferences enjoy the powers and faculties determined in the common Code.
- 2) Supra-national or international conferences: assemblies in which bishops of more than one nation take part. They are really associations or confederations of national bishops' conferences.³³ The functioning of such conferences is not properly regulated in the Code. Therefore, they have

During the formation of the canon, the Congregation for the Bishops made the following observation about regional conferences: "Non sembra poi opportuno che nello stesso paragrafo, quasi mettendole sullo stesso piano, si parli delle Conferenze regionali, le quali, invece, nella realtà hanno una portata del tutto diversa; o sono raggruppamenti di Conferenze nazionali con finalità di coordinamento e più appropriatamente si dicono Consigli, oppure sono articolazioni territoriali di Conferenze Episcopali particolarmente numerose e quindi con autonomia molto limitata". Communicationes 12 (1980) 250; cf. P. V. PINTO, Commento al codice di diritto canonico, Roma 1985, 263.

³³ At present there are 13 unions or confederations of bishops' conferences. See *Annuario Pontificio* 1997, 1104-1107.

to act according to the particular norms established by the Holy See on the occasion of their erection. The purpose of such confederations is to foster collegiality and dialogue, to work out pastoral initiatives together as well as to sort out solutions for common problems, yet without endangering the autonomy and competence of the national conferences.³⁴

3) Infra-national conferences: assemblies of bishops of the particular Churches of a region or a federal state within a nation to foster cooperation and common pastoral action in the region. As such, there can be several bishops' conferences within the same nation.³⁵ They also function according to the particular norms established by the Holy See on the occasion of their erection. As canon 434 clearly states, such regional meetings of bishops do not enjoy the powers given to bishops' conferences in the Code, unless some of these powers have been specially granted to them by the Holy See.

In certain particular circumstances, as an exception to the general rule, the Holy See may establish a bishops' conference which includes more than one country, but which enjoys all the powers and faculties determined in the Code. For example, the bishops' conference of Gambia, Liberia and Sierra Leone. ³⁶ Similarly the Holy See, in exceptional cases may establish more than one conference (which enjoys all the juridical powers of a national conference) within the confines of the one political entity, for example, the conferences of Scotland and of England and Wales. ³⁷

³⁴ Cf. The special issue of Concilium, entitled Collegiality Put to the Test, Concilium 4 (1990) 120-139; cf. Annuario Pontificio 1997, 1806-1807.

³⁵ Infra-national regional conferences exist in countries like the United States of America, India, Italy, etc., but their list is not given in the Annuario Pontificio.

³⁶ These three neighbouring African countries have only seven dioceses (Gambia - 1; Liberia - 3; and Sierra Leone - 3) and therefore it seems that at present the number of bishops is not sufficient to establish more conferences.

³⁷ Cf. The Canon Law Letter and Spirit, 251.

2.1.3. The Purpose of the Conference

According to the spirit of Vatican II and the Code, the scope or finality of the conference is to promote understanding and cooperation among bishops, as well as to foster common pastoral action for the greater good of the Christian faithful. Speaking about the necessity of the conferences Vatican II states that it is often impossible "for bishops to exercise their office suitably and fruitfully unless they establish closer understanding and cooperation with other bishops" and "it would be in the highest degree helpful if in all parts of the world the bishops of each country or region would meet regularly, so that by sharing their wisdom and experience and exchanging views they may jointly formulate a programme for the common good of the Church" (CD 37). The purpose is again clear from the description of the conference given in 38 (1): the bishops "exercise their pastoral office in collaboration, the better to promote the good which the Church offers to people, and especially through forms and methods of apostolate carefully designed to meet contemporary conditions"

Based on Vatican II, canon 447 indicates that in the bishops' conference the bishops together exercise "certain pastoral offices for Christ's faithful of that territory. By forms and means of apostolate suited to the circumstances of time and place, it is to promote, in accordance with the law, that greater good which the Church offers to mankind". As we have already annotated above, the change from "exercise their pastoral office in collaboration" of CD 38, n. 1 to "exercise together certain pastoral offices" in the Code shows a considerable reduction in the competence of the conference. Each bishop exercises in his diocese his pastoral ministry but assembled in a bishops' conference they exercise only some pastoral functions. The conference is not primarily a legislative body. but an organ of unity and communication.38 The draft statement of the Congregation for Bishops regarding the theologico-juridical status of the bishops' conference, published on 1 July 1987, clearly states that "Bishops' conferences were

³⁸ Cf. A. ANTON, Le conferenze episcopali: istanze intermedie?, 150-151.

not instituted for the pastoral government of a nation nor to substitute the diocesan bishops as a kind of superior or parallel government, but to help them in the fulfillment of some common tasks".³⁹ In short, the primary purpose of the bishops' conference is to foster unity, collaboration and communion among the bishops within a nation or a determined territory and to promote common pastoral action.

2.2. Institution and Juridical Personality

As we have elucidated, bishops' conferences originated as a result of the spontaneous initiative of bishops in order to coordinate pastoral action and to formulate common responses to important problems facing a nation due to the socio-cultural political changes. Therefore, it can be said that the bishops of a nation together instituted the bishops' conference. The 1917 Code practically recognized such conferences in the provincial level. Vatican II for the first time approved national bishops' conferences in the universal law, and without determining anything about the authority who institutes the conference, prescribed that "each bishops' conference should draw up its own statutes, to be approved by the Apostolic See" (CD 38, 3). Therefore, it is clear that bishops themselves institute the conference and draw up the statutes which should be approved by the Apostolic See. Similarly, supranational conferences are also instituted by the bishops, but with the approval of the Apostolic See.

The Apostolic Letter *Ecclesiae Sanctae* ordered that the bishops of countries or territories which have not established a bishops' conference, in accordance with the law of the decree *Christus Dominus*, should take steps as quickly as possible to do so and draw up its statutes which are to be approved by the Apostolic See.⁴⁰ Therefore, according to the doctrine of

³⁹ THE CONGREGATION FOR BISHOPS, "Status teologico e giuridico delle conferenze episcopali", (Instrumentum laboris), Enchiridion Vaticanum 10, 1296-1297.

^{40 &}quot;Episcopi nationum vel territoriorum, in quibus Conferentia Episcopalis nondum habetur, ad normam Decreti Christus Dominus, quam cito illam constituendam curent atque Statuta eiusdem conficiant, ab Apostolica Sede recognoscenda". Ecclesiae Sanctae, n. 41 § 1, AAS 58 (1966) 773.

Christus Dominus, reiterated by Ecclesiae Sanctae, it is the bishops of the "countries or territories" who establish the bishops' conference and draw up its statutes. The role of the Holy See consists in the approval of the statutes. Similarly the apostolic letter confirms that the international conferences can be also established by the bishops, but only with the approval of the Holy See.⁴¹

We notice a substantial change in the CIC 1983 regarding the establishment of the bishops' conferences. According to canon 449, it pertains to the supreme authority of the Church alone, after consultation with the bishops concerned, to establish, suppress or alter bishops' conferences.⁴² Therefore, according to the Code only the supreme authority, namely the pope or the ecumenical council, can establish bishops' conferences, but of course in consultation with the bishops involved. The juridical procedure for the establishment of bishops' conferences and the recognition of their statutes are accomplished by the Congregation for the Bishops or the Congregation for the Evangelization of Peoples in the mission countries.⁴³

A lawfully established bishops' conference has juridical personality by virtue of the law itself (c. 449 § 2). It belongs to the category of public collegial juridical persons according to canons 115 § 2 and 116, and it acts in harmony with the norm of canon 119.

^{41 &}quot;Conferentiae Episcopales plurium nationum seu internationales possunt constitui tantummodo Apostolica Sede approbante, cuius est peculiares normas statuere". Ecclesiae Sanctae, n. 41 § 4, AAS 58 (1966) 774.

^{42 &}quot;Unius supremae Ecclesiae auctoritatis est, auditis quorum interest Episcopis, Episcoporum conferentias erigere, supprimere aut innovare". Canon 449 § 1.

⁴³ Pastor Bonus, Art. 82, cf. also Arts. 76 and 79. Bishops' conferences have already been established in all the countries where the Latin Church was already deeply rooted before the promulgation of the Code. So this regulation affects only the mission countries, and it seems that the Holy See is the appropriate authority to provide for the well-being of such emerging Christian communities with whatever is necessary for the furthering of their growth.

2.3. The Nature of the Powers of the Bishops' Conference

The power of the bishops' conference, though limited and well-defined, is proper ordinary power in the sense of canon 131, because it belongs *ipse iure* to the conference.⁴⁴ This is also clear from the collocation of the canons concerning bishops' conferences in *Christus Dominus* and in CIC 1983. In CIC 1917 *De conciliis plenariis et provincialibus* (intermediary instances), including canon 292 which can be considered as the precedent regulation about bishops' conferences, are dealt with under the title VII of Book 2, *De suprema potestate deque iis qui eiusdem sunt ecclesiastico iure participes*. This indicated that the powers of the local episcopal bodies were conceived at that time as a sharing in the supreme power of the highest authority in accordance with ecclesiastical law.

Nevertheless in *Christus Dominus*, in accord with the ecclesiology of communion and the theology of the episcopate rehabilitated by Vatican II, the norms concerning synods, councils and bishops' conferences appeared in the context of particular Churches and diocesan bishops under chapter III entitled *De episcopis in commune plurium ecclesiarum bonum cooperantibus*. Similarly CIC 1983, deals with bishops' conferences under the title *De ecclesiis particularibus deque earundem coetibus*, namely in the context of particular Churches and their groupings, and not in the part dedicated to the supreme authority of the Church.⁴⁵ This change in the

⁴⁴ L. CHIAPPETTA, Il Codice di diritto canonico, vol. 1, 540; Discussion about the legislative power of the bishops' conference, Communicationes, vol. IX (1977), 216-218 & vol. XIV (1982) 199-200.

⁴⁵ CIC 1983 Book II, part II is entitled De Ecclesiae constitutione hierarchica; section I is dedicated to De suprema Ecclesiae Auctoritate, containing the canons concerning the Roman Pontiff (cc. 331-335), the college of bishops (cc. 336-341), the synod of bishops (cc. 342-348), the cardinals of the holy Roman Church (cc. 349-359), the Roman curia (cc. 360-361), the papal legates (cc. 362-367). Section II is called De ecclesiis particularibus deque earundem coetibus. Title I of this section deals with particular Churches (cc. 368-374), bishops (cc. 375-411) and the impeded or vacant see (cc. 412-430), and title II named Groupings of Particular Churches treats ecclesiastical provinces and ecclesiastical regions (cc. 431-434), metropolitans (cc. 435-438), particular councils (cc. 439-446) and bishops' conferences (cc. 447-459).

systematic ordering of the Code is indicative of the fact that the power at work in a bishops' conference does not derive from the supreme authority of the Church, but from the proper power of the bishops and their particular Churches. At present, the canonists are oriented to the fact that the power of a bishops' conference (from the point of view of its content) is not delegated power, but proper ordinary power which derives from the power of the bishops who together constitute the bishop's conference. Though the powers derive from the bishops themselves, it pertains to the supreme authority of the Church to establish regulations for the proper exercise of the bishops' powers as has been done in *Christus Dominus* and CIC 1983. But this does not affect the nature of episcopal powers. Therefore the powers of the conference are *potesta ordinaria*, not *delegata*, powers proper to it, not vicarious.

2.4. Statutes of Bishops' Conference

According to CD 38 (3), "Each bishops' conference should draw up its own statutes, to be approved by the Apostolic See". The motu proprio *Ecclesiae Sanctae* further specifies that the bishops of countries or territories which have not yet established bishops' conferences should do so as quickly as possible and "draw up its statutes which are to be approved by the Apostolic See" (41, 1).⁴⁷ Similarly, already existing bishops' conferences were asked either to prepare their own statutes or if the statutes were already in existence, to revise them in accordance with the mind of the council. All these

⁴⁶ Cf. K. MÖRSDORFF, "Decree on the Bishop's Pastoral Office", 281; P. KRÄMER, "Episcopal Conferences and the Apostolic See", The Jurist 48 (1988) 136-137; W. AYMANS, Das synodale Element in der Kirchenverfassung, 264; "Wesenverständnis und Zuständigkeiten der Bischofskonferenz im Codex Iuris Canonici von 1983", AKK 152 (1983)", 46-48; W. BERTRAMS, "De capacitate iuridica conferentiae episcoporum", in Ius populi Dei, Miscellanea in honorem Raymundi Bidagor, vol. 2, Rome 1972, 79-83; R. LETTMANN. "Episcopal Conferences in the New Canon Law", Studia Canonica 14 (1980) 352-355; H. MÜLLER, "The Relationship between the Episcopal Conference and the Diocesan Bishop", 118-120; A. ANTON, Le conferenze episcopali: istanze intermedie?, 118-120.

⁴⁷ Ecclesiae Sanctae, n. 41 § 1, AAS 58 (1966) 773.

statutes are to be approved by the Apostolic See.⁴⁸ International bishops' conferences can be established only with the approval of Apostolic See which gives also special norms (statutes) for their governance.⁴⁹

CIC canon 451, without making any substantial change in the conciliar and post-conciliar magisterium affirms that "each bishops' conference is to draw up its own statutes, to be reviewed by the Apostolic See". 50 In short, according to the Code, the statutes of a national bishops' conference are drawn up by the conference itself which must be reviewed by the Holy See. However, the statutes (special norms) of an infranational or supranational conference are determined by the Apostolic See itself when it establishes such a conference (c. 448 § 2).

Both CD and CIC specify certain elements which are to be covered by the statutes, such as plenary meetings, permanent councils or committees of bishops, a general secretariat of the conference and other offices and commissions. In addition, the statutes must determine whether to invite Ordinaries of other Churches and with what type of vote (c. 450 § 1), the type of vote to be extended to auxiliary bishops (c. 454 § 2), the status of the other titular bishops mentioned in canon 450 § 2 and their vote if they are members (c. 454 § 2), the relationship of the conference with the legate of the Roman Pontiff (c. 450 § 2), the administration of goods belonging to the conference (cc. 1279, 1281) and so on.⁵¹ The statutes can also determine the size of majority required for the validity of the decisions of the conference except in the cases of general decrees for which a two-thirds

⁴⁸ Ecclesiae Sanctae, n. 41 § 2, AAS 58 (1966) 774.

⁴⁹ Ecclesiae Sanctae, n. 41 § 4, AAS 58 (1966) 774.

⁵⁰ "Quaelibet Episcoporum conferentia sua conficiat statuta, ab Apostolica Sede recognoscenda, in quibus, praeter alia, ordinentur conferentiae conventus plenarii habendi, et provideantur consilium Episcoporum permanens et secretaria generalis conferentiae, atque alia etiam officia et commissiones quae iudicio conferentiae fini consequendo efficacius consulant". CIC canon 451.

⁵¹ J. H. PROVOST, "Groupings of Particular Churches", 367; cf. F. UCCELLA, "Le conferenze episcopali nel nuovo codice", 107; The Canon Law Letter and Spirit, 252.

vote is required according to canon 455. If nothing is specified in the statutes, the conference acts according to the norm of canon 119, which specifies the norm for collegial action.

3. Membership in a Bishops' Conference

3.1. Membership According to Christus Dominus

According to CD 38 (2), members of a bishops' conference are all local ordinaries of whatever rite, except vicars general, coadjutor and auxiliary bishops and other titular bishops engaged on special work assigned by the Apostolic See or by the bishops' conferences. Other titular bishops and legates of the Roman Pontiff, are not de iure members of the conference.⁵²

Membership is determined by two major criteria: membership in the college of bishops and pastoral responsibility. Membership in the college of bishops by episcopal consecration has its effects on the membership in the conference, and thus not only local ordinaries but also other bishops are members of the conference. However, the membership of the conference is not analogous to the rights of episcopal collegiality, and thus not all titular bishops of the territory belong to the conference by right. The condition of membership is not merely consecration but a specific share in the pastoral office within the territory of the conference. Hence bishops *emeriti* and other titular bishops living in the territory, but without a role legitimately assigned to them, are not members of the conference. Similarly, legates of the Roman Pontiff or apostolic nuncios are not *de iure* members.⁵³

^{*}Omnes ordinarii locorum cuiuscumque ritus, vicariis generalibus exceptis, coadiutores, auxiliares aliique episcopi titulares peculiari munere vel ab apostolica sede vel ab episcoporum conferentiis demandato fungentes ad episcoporum conferentiam pertinent. Ceteri episcopi titulares necnon, ob singulare quod obeunt in territorio officium, legati Romani pontificis non sunt de iure membra conferentiae.

For detailed analysis, see K. MÖRSDORF, "Decree on Bishops' Pastoral Office", 287; "Das synodale Element der Kirchenverfassung im Lichte des zweiten vaticanischen Konzils", in Volk Gottes, Freiburg-

About membership in the bishops' conference the observation made in the commentary *The Canon Law: Letter and Spirit* seems to be revealing:

The criterion for membership involves two elements, namely episcopal governance and episcopal orders. Either element is a basis for entitlement to membership, but neither by itself suffices for automatic membership with full voting rights. Of the two, the more significant element is that of pastoral office; some titular bishops, although obviously in episcopal orders, need not be invited, and even auxiliary bishops do not in all matters have a deliberative vote (See can. 454 § 2), whereas non-episcopal, territorial prelate or abbot has a right to attend and to a deliberative vote.⁵⁴

In summary, according to the Council, ordinary members of the bishops' conference include all the local ordinaries of the Latin and Oriental Churches, coadjutor and auxiliary bishops and those titular bishops who exercise some pastoral ministry within the same nation or region.

3.2. Membership According to CIC

Canon 450 which deals with membership of bishops' conferences is drawn from CD 38, but with a notable change. According to CD, *Ordinarii locorum cuiuscumque ritus* are ordinary members of bishops' conferences and thus the ordinaries of Oriental Churches also participate with equal rights. The attribution of deliberative votes to the ordinaries of Oriental Churches aroused considerable perplexity because of the fact that in this way the Oriental bishops either take part with their vote in deliberations which do not concern

Wasel-Wien 1967, 581-582; R. SOBANSKI, "The Theology and Juridical Status of Episcopal Conferences", 96-97; G. FELICIANI, Le conferenze episcopali, 458-464; R. LETTMANN, "Episcopal Conferences in the New Canon Law", 357; R. BEZAC, "Les conferences episcopales nationales", 313-314; AYMANS, Das synodale Element in der Kirchenverfassung, 36-40; A. GARUTI, La collegialità oggi e domani, Bologna 1982, 69; F. UCCELLA, Le conferenze episcopali in diritto canonico, Napoli 1973, 40-43.

⁵⁴ The Canon Law Letter and Spirit, 252.

them but affect only the Latin Church, or else find themselves subject to juridically binding decisions made by assemblies predominantly composed of bishops of the Latin Church and thus jeopardize the legitimate autonomy of Oriental Churches affirmed by *Orientalium Ecclesiarum*. ⁵⁵

The Code commission tried to sort out a solution to the problem of membership of Oriental bishops and formulated canon 450 modifying the phrase *Ordinarii locorum* cuiuscumque ritus. The new canon reads as follows:

Can. 450 § 1. By virtue of the law, the following persons in the territory belong to the bishops' conference: all diocesan bishops and those equivalent to them in law; all coadjutor bishops, auxiliary bishops and other titular bishops who exercise in the territory a special office assigned to them by the Apostolic See or by the bishops' conference. Ordinaries of another rite may be invited, but have only a consultative vote, unless the statutes of the bishops' conference decree otherwise.

§ 2. The other titular bishops and the Legate of the Roman Pontiff are not by law members of the bishops' conference.

According to common law, only bishops of the Latin Church are *de iure* members of the conference, and only they enjoy a deliberative vote. Ordinaries of Oriental Churches can be invited but only with a consultative vote. Thus in compliance with the common law, Oriental bishops can participate in a bishops' conference with a consultative vote as guests, if they are invited. However, this norm is not stated in an absolute manner but conditionally *nisi Episcoporum conferentiae statuta aliud decernant.* Consequently, the statutes of any

⁵⁵ G. FELICIANI, "Episcopal Conferences", 15; Le conferenze episcopali, 465-466; "Le conferenze episcopali nel codice", 499; K. MÖRSDORF, "Decree on the Bishops' Pastoral Office", 289; W. AYMANS, "Ritusgebundenheit und territoriale Abgrenzung der Bischofskonferenzen", AKK 135 (1966) 548-549; P. V. PINTO, Commento al codice di diritto canonico, 264.

Though some consultors were against granting deliberative vote to Oriental Bishops, it was decided to leave the final decision to each

conference can grant the Ordinaries of Oriental Churches a deliberative vote. Hence the participation of Oriental bishops in the bishops' conference and the nature of their participation (with deliberative or consultative vote) remain undetermined, remitting any decision on the matter to the complete discretion of individual episcopates, and the Holy See which approves the statutes.⁵⁷ Hence according to the Latin Code, though the bishops' conference is an institution of the Latin Church, Oriental bishops can participate with deliberative vote if the statutes of any conference so determine.⁵⁸ However the conference remains a hierarchical institution of the Latin Church and does not become an inter-Church assembly.⁵⁹

With the promulgation of the Oriental Code it becomes evident that the bishops' conference is exclusively an institution of the Latin Church. The episcopal bodies of Oriental Churches are either the synod of bishops or council of hierarchs, and there is no provision for any bishops' conference. The Oriental Code does not foresee the participation of the bishops of Oriental Churches in the bishops' conference of the Latin Church even with a consultative vote.

bishops' conference "sia perché le circostanze sono molto diverse nei vari territori, sia perché la presenza di qualche Ordinario di altro rito in una Conferenza Episcopale non crea difficoltà all'eventuale formulazione di norme per la sola Chiesa latina, come avviene anche nei Concili Ecumenici". Communicationes XII (1980) 265.

⁵⁷ Cf. G. FELICIANI, "Episcopal Conferences", 16; Cf. F. UCCELLA, "Le conferenze episcopali nel nuovo Codice", 106.

⁵⁸ For example, the Constitution of the Canadian Bishops' Conference states: "The Episcopal Conference includes as members all diocesan bishops and those equivalent to them in law, all coadjutor bishops, auxiliary bishops and other titular bishops who exercise in the territory a special office assigned to them by the Apostolic See or by the Episcopal Conference of any rite within the Catholic Church". [Code of Canon Law Annotated, 1316]. According to the same Constitution "All members of the Episcopal Conference have the right to vote, the power to elect and the capacity to be elected". [Code of Canon Law Annotated, 1316]. The statutes of the bishops' conference of United States of America also stipulate the same. See I. C. IBAN, Gli statuti delle Conferenze Episcopali, II. America, Padova 1989, 178-179.

⁵⁹ See G. MADATHIKANDAM, CBCI: An Inter-Ecclesial Assembly, Kottayam 1995, 82-103.

but provides for the assemblies of hierarchs of several Churches sui iuris exercising their authority in the same nation or region "in order that communicating the insights together, the hierarchs work in accord as much as possible for the common good of the Churches, through which unity of action is fostered, common endeavors are facilitated, the good of religion is expeditiously promoted and ecclesiastical discipline is efficaciously preserved" (c. 322 § 1). Normally, the decisions of these assemblies do not have a juridically binding force (c. 322 § 2): therefore, some assemblies in which the Orientals participate, though called bishop's conferences. are really inter-Church assemblies that cannot make juridically binding decisions in accordance with CCEO canon 322.60 However, in countries like the USA, Canada, France, Greece. Ethiopia, etc., Oriental bishops are de jure members of the bishops' conference, and they have a deliberative vote with the exception of matters pertaining to the Latin Church alone. Generally, the decisions of the conference bind the Eastern Churches only if they are not contrary or prejudicial to the Eastern canon law and spiritual heritage. 61

With regard to other matters regarding membership, the Code maintains the regulations of the Council. Hence, according to CIC, all diocesan bishops and eiusque iure aequiparati are members of the conference. Describing particular Churches, canon 368 states that "particular Churches in which and from which the one and only Catholic

⁶⁰ For example, the Catholic Church in India is a communion of three Churches: the Syro-Malabar Church, the Latin Church and the Syro-Malankara Church. Each of these Churches has its own episcopal body: the Syro-Malabar Church has a synod, the Latin Church - a bishops' conference and the Syro-Malanakara Church - a council of hierarchs. The so called Catholic Bishops' Conference of India (CBCI) is now a consultative body of the bishops of the three Catholic Churches in India whose purpose is to foster mutual collaboration, harmony and coordination among the three Churches and to treat questions of common concern and of a national and supra-ritual character. See the letter of His Holiness Pope John Paul II to the Bishops of India, P. Pallath, ed., Pope John Paul II and the Catholic Church in India, 211; G. MADATHIKANDAM, CBCI: An Inter-ecclesial Assembly.

⁶¹ Cf. G. MADATHIKANDAM, CBCI: An Inter-ecclesial Assembly, 97-103.

Church exists, are principally dioceses. Unless it is established otherwise, the following are equivalent to a diocese: a territorial prelature, a territorial abbacy, a vicariate apostolic, a prefature apostolic and a permanently established apostolic administration". Canon 381 § 2 specifies that persons who head the other communities mentioned in canon 368 are equivalent in law to a diocesan bishop.62 Similarly, in accordance with canon 427 § 1. diocesan administrators are also equivalent in law to the diocesan bishops. 63 Therefore, those who are equivalent to diocesan bishops in law are prelates or abbots who govern territorial prelatures or abbacies (c. 370). vicars apostolic or prefects apostolic who head apostolic vicariates or prefectures (c. 371 § 1), apostolic administrators (c. 371 § 2) and diocesan administrators who exercise power during the vacancy of dioceses (cc. 419-430). Thus many persons who are not bishops (but only priests) are de iure members of the conference, while consecrated bishops who live within the territory of the conference but do not have any function or office are not members.64 Therefore, according to CIC, the members of a bishops' conference can be categorized as follows:

1. De iure members of the conference

- Diocesan bishops.
- Those who are equivalent to diocesan bishops in law, though not consecrated bishops, such as territorial prelates or abbots, vicars apostolic or prefects, apostolic administrators and diocesan administrators.
 - Coadjutor bishops.
 - Auxiliary bishops.
- Other titular bishops who fulfill a particular pastoral function mandated either by the Apostolic See or by the bishops' conference.

^{62 &}quot;Qui praesunt aliis communitatibus fidelium, de quibus in can. 368, Episcopo dioecesano in iure aequiparantur, nisi ex rei natura aut iuris praescripto aliud appareat". Canon 381 § 2.

^{63 &}quot;Administrator dioecesanus tenetur obligationibus et gaudet potestate Episcopi dioecesani, iis exclusis quae ex rei natura aut ipso iure excipiuntur". Canon 427 § 1.

⁶⁴ H. MÜLLER, "The Relationship between the Episcopal Conference and the Diocesan Bishop", 124-125.

2. Optional members: bishops of the Oriental Churches who exercise ministry within the territory of the conference are not *de iure* members of the conference but they can be invited.

3. Not members of the Conference "ex jure communi"

- Titular bishops, including retired bishops who do not enjoy a pastoral function within the territory of the conference. The statutes of a conference can admit them as members.
- Legates of the Roman Pontiff: Christus Dominus 38 (2) clearly states that legates of the Roman Pontiff are not de iure members of the bishops' conference. However, Pope Paul VI in the motu proprio Sollicitudo omnium Ecclesiarum of 24 June 1969 enjoined that the papal legate, though he is not a member of the conference, shall attend the first meeting of each plenary session. He shall be entitled to attend other meetings if he is invited by the bishops or is sent by the Apostolic See. Moreover, the conference is bound to inform him of the agenda of the assembly and to provide him with the minutes of the proceedings.65
- 4. Participation of priests, religious and laity: since the bishops' conference is a body of bishops and "those who are equivalent to them in law" neither priests, religious nor lay people can be its members. However, the statutes can establish that they may be invited to the conference in individual cases for particular questions and only with a consultative vote.66

^{65 &}quot;Quamvis ex iure membrum Conferentiae non sit, nihilominus ipse primo coetui cuiusvis sessionis generalis intererit, salvo iure participandi alios Conferentiae coetus ex ipsorum Episcoporum invitatione aut ex expresso Apostolicae Sedis mandato; praeterea ipsi notae fient tempore utili quaestiones in sessione tractandae, atque exemplar actorum mittetur, ut ipse de his certior reddatur eademque ad Apostolicam Sedem transmittat". PAUL VI, Sollicitudo omnium Ecclesiarum, VIII, 2, AAS 61 (1969) 482; cf. Communicationes 17 (1985) 100; also Communicationes 14 (1982) 197.

[&]quot;Cum Conferentiae Episcopales sint coetus Episcoporum, eaedem ex Episcopis et viris ecclesiasticis in iure ipsis aequiparatis tantum constant, iuxta praescriptum Decreti de pastorali Episcoporum munere in Ecclesia Christus Dominus, n. 38, 2: alii vero, presbyteri, religiosi et laici invitari possunt a Conferentia Episcopali, ad normam statutorum, singulis tamen in rebus et causis et cum voto consultivo tantum". Commission for the Interpretation of the Decrees of Second

Therefore the law, in order to preserve the episcopal character of the conference, does not allow for the participation of priests, religious and laity on a regular basis.

3.3. Deliberative Vote of Members

According to CD 38 (2), local Ordinaries and coadjutor bishops (including those of Oriental Churches) have a deliberative vote, the latter probably because they share in the principal responsibility for a particular Church. The statutes of each conference determine whether auxiliary and other bishops who have the right to take part in the conference have a deliberative or a consultative vote. A proposal according to which every particular Church or diocese would have only one vote, either the bishop or coadjutor, was refused by the commission with the explanation that the vote is "personal and not given in the name of a diocese or collegial".67 Thus those particular Churches which are not in their normal state, carry greater weight in the bishops' conference than the others.68 However, the Council has upheld the importance and preeminence of diocesan bishops by reserving active votes to these bishops alone in deciding matters of statutes. The statutes are to determine the deliberative or consultative nature of the votes of titular bishops, but the statutes themselves are determined by those who are at the head of particular Churches (or an equivalent community). 69 In line with the regulations of CD concerning deliberative vote. CIC 1983 canon 454 states:

§ 1. By virtue of the law diocesan bishops, those equivalent to them in law and coadjutor bishops

Vatican Council, Response of 31 October 1970: AAS 62 (1970) 793; Communicationes, 2 (1970) 165-166. For further discussion Communicationes 12 (1980) 267; 14 (1982) 200.

^{67 &}quot;Quoad suffragium vero, dicendum est ipsum esse personale, non autem nomine dioecesis seu collegiale". AS IV, 2: 608.

⁶⁸ K. MÖRSDORF, "The Decree on the Bishops' Pastoral Office", 287-288.

⁶⁹ Cf. H. MÜLLER, "The Relationship between the Episcopal Conference and the Diocesan Bishop", 125-129; R. SOBANSKI, "The Theology and Juridical Status of Episcopal Conferences", 125-12.

have a deliberative vote in plenary meetings of the bishops' conference.

§ 2. Auxiliary bishops and other titular bishops who belong to the bishops' conference have a deliberative or consultative vote according to the provisions of the statutes of the conference. Only those mentioned in § 1, however, have a deliberative vote in the making or changing of the statutes.

CIC canon 454 substantially retains the conciliar norm concerning active vote and reserves *de iure* deliberative vote only to diocesan bishops, those who are equivalent to them in law and coadjutor bishops, while the consultative or deliberative nature of the votes of other members is left to the statutes. The provisions of CIC concerning deliberative vote can be summarized as follows:

- 1. Diocesan bishops, those who are equivalent to them in law and coadjutor bishops *de iure* enjoy deliberative vote in the conference. Only these have a deliberative vote in the initial formation or subsequent modification of statutes. With regard to the deliberative vote the coadjutor bishops are considered equal to the diocesan bishops, because of the right of succession they posses over the diocese that may be affected by the decisions.⁷⁰
- 2. Auxiliary bishops and other titular bishops who are members of the conference enjoy either a deliberative or consultative vote according to the statutes.⁷¹
- 3. Ordinaries of Oriental Churches if invited have only a consultative vote, unless the statutes of any bishops' conference grant them deliberative vote.⁷²

⁷⁰ Cf. Code of Canon Law Annotated, 342.

⁷¹ For example, according to the statutes of the Canadian and American (USA) bishops' conferences, all members of the conference including auxiliary bishops enjoy active vote. I. C. IBAN, Gli statuti delle Conferenze Episcopali, 104 and 178-179.

⁷² According to the Argentinean, Canadian and American (USA) bishops' conferences the Ordinaries of Oriental Churches enjoy deliberative vote. See I. C. IBAN., Gli statuti delle Conferenze Episcopali, pages 71, 104-105 & 178-179 respectively.

4. Internal Organization of the Conference

The major organizational elements required by the Code for a bishops' conference are: offices - president, vice-president and general secretary (c. 452); permanent council, administrative and executive committees (c. 457) and the meetings of the full conference. Other details are left to the statutes of each bishops' conference.

According to common law, the main officer of the conference is the president who is elected by the conference itself.⁷³ Election is not required by common law for the vice-president, general secretary, permanent council and such other organs.⁷⁴ However, according to the statues of most of the conferences, the vice-president, general secretary, etc. are also elected. The president presides over the plenary meetings of the conference and over its permanent council, forwarding to the Apostolic See a report of the acts and a copy of any decree from each plenary meeting (c. 456). He may have other responsibilities in keeping with the statutes, but he cannot act in the name of all bishops unless it is a matter for which special competence has been given or each and every bishop consents.⁷⁵ Auxiliary bishops cannot hold the office of president or vice-president.⁷⁶

⁷³ The only exception to this general rule is in Italy where the president and the general secretary of the conference are nominated by the pope. The statutes of the Italian Bishops' Conference states: "In considerazione dei particolari vincoli dell'episcopato d'Italia con il Papa, Vescovo di Roma, la nomina del presidente della Conferenza è riservata al sommo Pontefice". [R. ASTORRI, Gli statuti delle Conferenze Episcopali, I. Eurpa, Padova 1987, 129]. "Il Vescovo segretario Generale è nominato dal Sommo Pontefice su proposta della presidenza, sentito il Consiglio Permanente. R. ASTORRI, Gli statuti delle Conferenze Episcopali, 131.

⁷⁴ G. FELICIANI, "Episcopal Conferences", 19.

⁷⁵ J. H. PROVOST, "Groupings of Particular Churches", 367; P. V. PINTO, Commento al codice di diritto canonico, 265.

⁷⁶ To the doubts "Utrum Episcopus auxiliaris munere Praesidi (aut Pro-Praesidis) in episcoporum conferentis fungi possit" and "Utrum id possit in conventibus Episcoporum regionis ecclesiasticae, de quibus in can. 434", the response was "Negative ad utrumque". The authentic interpretation of the Pontifical Council for the Interpretation of

Plenary assembly is the convocation of all the members of the conference. According to the common law, such assembly is to be held at least once a year. However, a plenary assembly can be convoked at any time if special circumstances require it according to the regulation of the statutes (c. 453). The plenary assembly is the constitutive, essential and deliberative organ which exercises all the powers and faculties belonging to the bishops' conference in such a way as to be identified with it in the final analysis.⁷⁷

5. Legislative Power of the Bishops' Conference

In the course of the formation of the Code, the Pontifical Commission made it clear that the bishops' conference is not to be understood primarily as a legislative body directed towards the centralization of everything (at the intermediate level) but "an organ of union and communication of bishops among themselves, so that in the governance of their own dioceses each one can proceed with the insights of prudence and experience in the light of common consultation (CD 37), and therefore in the same conciliar decree it was established that the decisions of conferences would have obligatory force only in expressly defined cases (CD 38)".78 Responding to the criticism about the limited legislative power of the bishops' conference, the commission replied:

An indiscriminate concession of legislative power to bishops' conferences would be a detriment not

Legislative Texts on 19.01.1988, in AAS 81 (1989) 388.

⁷⁷ THE CONGREGATION FOR BISHOPS, "Status teologico e giuridico delle conferenze episcopali", (Instrumentum laboris), Enchiridion Vaticanum 10, 1303.

⁷⁸ In the words of the commission, "[...] Et merito quidem, quia Conferentia Episcoporum non intelligitur primarie ut coetus legislativus qui fere omnia centralizare debeat, sed est praesertim organum unionis et communicationis Episcoporum inter se, ita ut in regimine propriae dioecesis, unusquisque procedere valeat <communicatis prudentiae et experientiae luminibus collatisque consiliis> (Decr. Christus Dominus, n. 37), et propterea in eodem Decreto conciliari statuitur decisiones Conferentiae vim iuridice obligandi habere dumtaxat in casibus expresse definitis (n. 38, 4)". Communicationes 14 (1982) 199.

only to the authority of the Holy See, but also to the authority each diocesan bishop enjoys in his own diocese, and would also be against the intention and word of the Second Vatican Council (Cf. CD 38; motu proprio *Ecclesiae Sanctae I, 41*).⁷⁹

In short, according to the Commission, the bishops' conference is not primarily a legislative organ, but an organ of consultation for the coordination of pastoral action. According to L. Chiappetta, the bishops' conference is essentially a pastoral institution, a manifestation of "ecclesiarum communio" and "episcopal collegiality". It is an indispensable organ of collaboration among the bishops in service of the people of God. Undoubtedly, the bishops' conference exercises a legislative function in those peremptorily determined matters, but this is not its distinctive character. Primarily and essentially, it is an organ of orientation and pastoral cooperation, not a legislative body.80 However, the bishops' conference has legislative power under strict and rigorous conditions in accordance with CIC canon 455, which is substantially a repetition of CD 38 (4). In the following pages, we analyze canon 455 in order to arrive at a comprehensive idea about the legislative power of bishops' conferences.

Can.455 § 1. The bishops' conference can make general decrees only in cases where the universal law has so prescribed, or by special mandate of the Apostolic See, either on its own initiative or at the request of the conference itself.

§2. For the decrees mentioned in §1 validly to be enacted at a plenary meeting, they must receive at least two thirds of the votes of those who belong to the conference with a deliberative vote. These

^{79 &}quot;Animadversio minime admitti potest, quia: a) 'concessio indiscriminata potestatis legislativae Conferentiis Episcoporum esset in detrimentum, non tantum auctoritatis Sanctae Sedis, sed etiam auctoritatis qua in sua cuiusque dioecesi singuli Episcopi dioecesani pollent, necnon contra mentem et verba Concilii Vaticani II (cfr. Decr. Christus Dominus, n. 38 § 4; M.P. Ecclesiae Sanctae, I, n. 41)". Communicationes 14 (1982) 199.

⁸⁰ L. CHIAPPETTA, Il codice di diritto canonico, vol. 1, 535.

decrees do not oblige until they have been reviewed by the Apostolic See and lawfully promulgated.

§3. The manner of promulgation and the time they come into force are determined by the bishops' conference.

§4. In cases where neither the universal law nor a special mandate of the Apostolic See gives the bishops' conference the power mentioned in §1, the competence of each diocesan bishop remains intact. In such cases, neither the conference nor its president can act in the name of all the bishops unless each and every bishop has given his consent.

5.1. Concept of General Decree

According to canon 29, general decrees, by which common provisions are made by a competent legislator for a community capable of receiving law, are true laws and are regulated by the provisions of the canons on laws as stated in canons 7-22. Therefore, the "general decrees" spoken of in canon 455 § 1 are truly laws. They are to be drawn up and promulgated according to the norms concerning laws and are to be interpreted as laws. According to the Code, the diocesan bishops can issue general decrees or laws for the diocese, particular councils within their competence, the bishops' conference for a nation according to the conditions expressed in canon 455, and the Roman Pontiff for the entire Church. So

General decrees are different from general executive decrees which define the manner of application or urge the observance of laws. General executive decrees are not technically laws but presuppose laws that need to be applied and interpreted in practice.⁸³ The authentic interpretation

⁸¹ J. H. PROVOST, "Preparing for Particular Legislation to Implement the Revised Code", The Jurist 42 (1982) 353; L. CHIAPPETTA, Il codice di diritto canonico, vol.1, 540.

⁸² Cf. The Code of Canon Law: A Text and Commentary, 46; J. H. PRO-VOST, "Preparing for Particular Legislation", 357-364.

⁸³ CIC c. 31; cf. W. AYMANS, "Wesenverständnis und Zuständigkeiten der Bischofskonferenz", 52.

of 14 May 1985 made it clear that the decreta generalia spoken of in canon 455 includes also the decreta generalia exsecutoria treated in canons 31-33. Therefore, general executive decrees also must be emanated in conformity with canon 455 § 1-2 in order to have legal force.⁸⁴

5.2. Only in Determined Cases or by Special Mandate of the Apostolic See

Already Christus Dominus prescribed that the decisions of the bishops' conference have binding force only in those matters "that have been prescribed by common law, or enacted by special mandate of the Apostolic See acting on its own initiative or in response to a petition made by the conference itself" (38,4). The same norm is reiterated by the CIC 1983. Thus the bishops' conference can make laws or issue general decrees for its territory only in those limited cases in which the common law has so prescribed. The Code does not clearly distinguish the instances in which the conference is authorized to issue general decrees. After the promulgation of the Code. the Secretary of State in a letter addressed to the presidents of the bishops' conferences on 8 November 1983 solicited to make particular laws in order to avoid lacunae. According to the list given by the letter, in 21 cases the conference must make particular laws, and in 22 cases the conference can issue particular norms. But the letter does not distinguish between decreta generalia and other norms.85 In the next section of this chapter we enumerate the various instances of particular law provided by the common Code.

In addition to the limited instances enumerated in CIC, the conference can promulgate general decrees in cases for which a special mandate is granted by the Holy See, either

⁸⁴ Pontificia commissio Codici Iuris Canonici Authentice Interpretatando, authentic interpretation of 14 May 1985 in AAS 77 (1985) 771. "Utrum als locutione 'decreta generalia' de qua in can. 455 § 1, veniant etiam decreta generalia exsecutoria de quibus in cann. 31-33. R. Affirmative". Also in Communicationes 17 (1985) 262.

⁸⁵ Communicationes 15, n. 1 (1983) 135-139; also in J. T. MARTIN DE AGAR, Legislazione delle conferenze episcopali complementare al C.I.C., Milan 1990, 37-40.

issued on its own initiative or by request from the conference itself. Therefore, if the conference would like to issue a general decree on a problem confronting the Church in a particular nation, first of all it should request the mandate from the Holy See and it can issue the decree only if the mandate has arrived. In this case it would not be ordinary - collegial - but delegated power which would be exercised.⁸⁶

The bishops' conference has no legislative power except in those cases categorically determined in the Code or mandated by the Holy See, since the content and limits of its activity are not established by the bishops, whether considered jointly or separately, but by the supreme authority of the Church.⁸⁷ Thus in all other matters the power of each diocesan bishop remains intact.

5.3. Only in the Plenary Assembly of the National Conference

As we have noted, the bishops' conference has a plenary assembly, a permanent council or committee, a general secretariat and other commissions. Plenary assembly is the meeting of all members of the conference and takes place at least once a year. The exercise of the legislative power in accordance with canon 455 is entrusted only to the plenary meeting. Thus it cannot be delegated to any other body of the conference. Hence for validity, general decrees must be discussed and approved at a plenary session of the conference. Drafts may be prepared by the permanent committee or general secretariat, but the final text must emanate from the plenary assembly.⁸⁹

⁸⁶ Cf. THE CONGREGATION FOR BISHOPS, "Status teologico e giuridico delle conferenze episcopali", (Instrumentum laboris), Enchiridion Vaticanum 10, 1301; R. SOBANSKI, "The Theology and Juridical Status of Episcopal Conferences", 99.

⁸⁷ Communicationes 12 (1980) 244-245; Code of Canon Law Annotated, 343.

⁸⁸ Cf. Replies of the Pontifical Commission for the Interpretation of the Decrees of the Second Vatican Council, AAS 60 (1968) 361-362 and AAS 72 (1980) 106.

⁸⁹ Cf. The Canon Law Letter and Spirit, 255.

As we have indicated above, unions or confederations of bishops' conferences can be established at regional and even continental levels. Similarly large countries have infranational conferences based on language or political division (federal state). According to common law such conferences are only consultative organs and cannot make juridically binding decisions. Hence only the national bishops' conference can exercise legislative power in compliance with canon 455.

5.4. The Special Majority

According to CD 38 (4), the decisions of a bishops' conference have binding force in law only if they have been made in the plenary assembly by at least a two-thirds majority of the votes of the prelates who are members of the conference with a deliberative vote. Hence the majority is not determined by the fully competent members present but by the number of those members who enjoy the vote. The potential votes of those who are not present and of the abstaining members as well as the invalid votes are counted as opposing a proposal.90 The majority of two-thirds of the members with a deliberative vote was decided by the council Fathers to provide greater security for the autonomy of diocesan bishops and to prevent the majority of bishops from being bound by the view of the minority.91 The same norm has been adopted by CIC in canon 455 § 2. Therefore, a general decree, either in a case stipulated in common law or mandated by the Holy See, can attain juridical force only if it is passed with two-thirds majority of those with a right to vote, whether absent or present.

⁹⁰ K. MÖRSDORF, "Decree on the Bishops' Pastoral Office", 293; Cf. G. FELICIANI, Le conferenze episcopali, 493-494; "Il potere normativo delle conferenze episcopali nella comunione ecclesiale", ME 116 (1991) 88.

^{91 &}quot;Omnia haec statuit Schema nostrum; quod maiori cautela tutari voluit Episcoporum independentiam, cum requirat duas ex tribus partibus suffragiorum omnium praesulum conferentiae voto deliberativo fruentium". AS III, 6: 204.

5.5. Review by the Apostolic See

Christus Dominus 38 (4) and CIC canon 455 § 2 stipulate that a general decree adopted by the necessary two-thirds majority of bishops who are members of the conference with a deliberative vote must be reviewed by the Apostolic See. If the general decree proves to be in conformity to the common law and the authentic magisterium of the Church, the Apostolic See replies that there is no objection (nihil obstat) to the decision of the conference. Recognitio is an essential conditio iuris for the completion of the legislative act, but it does not mean an intervention on its nature. If a decree is not in conformity with common law, the Apostolic See normally sends it back to the conference with the request of eventual amendment, and the decision would have no legal force unless it were amended or corrected in the sense of observations made. 92

The review (recognitio) is certainly a participation of the Apostolic See in the development of particular law. However, the conference remains the only author of each respective decision. The Apostolic See does not make this decision its own, but limits itself to examining it for its conformity to the universal law.⁹³

In some important matters as explicitly stated in the canons itself, for the general decrees of the conference not the mere review but the prior or subsequent approval (approbatio) of the Holy See is mandatory. Thus the approval of the Holy See is necessary for the regulation of benefices by appropriate norms (c. 1272), for the publication of catechisms

⁹² P. KRÄMER, "Episcopal Conferences and the Apostolic See", 138; P. V. PINTO, "Il potere legislativo delle conferenze episcopali", Euntes Docente 3 (1992) 364-365; R. BEZAC, "Les conférences épiscopales nationales", RDC 15 (1965) 316; W. BERTRAMS, "De capacitate iuridica conferentiae episcoporum", 81. Sometimes the content of the decrees is also modified by the Holy See in the process of reviewing them. Cf. F. MORRIESY, "Episcopal Conferences and the Three Munera", 27; D. B. MURRAY, "The Legislative Authority of Episcopal Conference", in J. Hite & D. J. Ward, Readings, Cases, Materials in Canon Law, Revised edition, Minnesota 1990, 296-298.

⁹³ Cf. P. KRÄMER, "Episcopal Conferences and the Apostolic See", 137.

for its territory (c. 775 § 2), for the suppression or transfer of certain holy days of obligation (c. 1246 § 2), for the particular programme of priestly formation for its territory (c. 242 § 1), etc. In these cases also the approved decision remains particular law and as such is under the full responsibility of the bishops' conference involved.94

The recognitio spoken of in the canon is conferred by the Congregation for Bishops. According to Pastor Bonus number 82, the Congregation receives the acts of the conference and "in consultation with the dicasteries concerned, it examines the decrees which require the recognitio of the Apostolic See". In mission countries this competence belongs to the Congregation for the Evangelization of Peoples. Before granting the recognitio, these congregations are obliged to submit the decrees to the Pontifical Council for the Interpretation of Legislative Texts, in order that they may be examined from a juridical perspective. 97

5.6. Promulgation

According to canon 455 § 2, general decrees adopted by the bishops' conference do not have binding force, unless they have been legitimately promulgated, after having been reviewed by the Apostolic See. The same canon §3 stipulates

⁹⁴ Cf. P. KRÄMER, "Episcopal Conferences and the Apostolic See", 138.

^{95 &}quot;Congregatio ea absolvit, quae ad celebrationem Conciliorum particularium necnon ad Episcoporum Conferentiarum erectionem atque earundem statutorum recognitionem attinent; acta huiusmodi coetuum recipit atque decreta, quae recognitione egent, collatis consiliis cum Dicasteriis, quorum interest, recognoscit". Pastor Bonus Art. 82, AAS 80 (1988) 880.

[&]quot;Eidem subsunt territoria missionum, quarum evangelizationem idoneis Institutis, Societatibus necnon Ecclesiis particularibus committit, et pro quibus ea omnia agit, quae sive ad circumscriptiones ecclesiasticas erigendas vel immutandas, sive ad Ecclesiarum provisionem pertinent ceteraque absolvit, quae Congregatio pro Episcopis intra suae competentiae ambitum exercet". Pastor Bonus, Art. 89, AAS 80 (1988) 882.

^{97 &}quot;Eidem insuper subicienda sunt a Dicasterio competenti pro recognitione decreta generalia Episcoporum coetuum ut examinentur ratione habita iuridica". Pastor Bonus, Art. 157, AAS 80 (1988) 901.

that "the manner of promulgation and the time they come into effect are determined by the bishops' conference itself'. After having been legitimately promulgated, the decree obtains legal force in the entire territory of the conference consonant with canons 7-22 of CIC.

The diocesan bishops are bound to accept faithfully the general decrees promulgated by the conference and to execute them in their dioceses as if they were emanated from the supreme authority of the Church, even if they might have voted against them in the beginning.⁹⁸

5.7. Validity of Other Decisions of the Conference

Except in the case of general decrees promulgated according to the rigorous conditions imposed by the Code, the competence of each diocesan bishop remains intact and neither the conference nor its president can act in the name of all the bishops unless each and every bishop has given his consent (CIC c. 455 § 4). Therefore, other conference decisions have no juridical binding force in themselves, unless the diocesan bishop decides to publish and implement in his diocese such decisions of the conference, which have only the character and nature of counsel or recommendation.⁹⁹ In fact, the bishops' conference is often just an advisory or coordinating body.¹⁰⁰ Similarly the president of the conference or any of its organs cannot intervene to implement a decision of the conference in a diocese if its bishop does not agree.

^{98 &}quot;Decisiones, a Conferentia legitime latas et ab Apostolica Sede recognitas, tamquam vim legis a suprema Ecclesiae auctoritate habentes, fideli obsequio Episcopus accipit et exsecutioni mandat, licet ipse de iisdem antea forte non consenserit vel aliqua incommoda obire debeat, et in dioecesi observanda curat". Direttorio pastorale, Ecclesiae imago of 22 February 1973, n. 212 in Enchiridion Vaticanum, vol. 4, 1478-1479.

⁹⁹ Cf. H. MÜLLER, "The Relationship between the Episcopal Conference and the Diocesan Bishop", 128; P. V. PINTO, "Il potere legislativo delle conferenze episcopali", 369; Commento al codice di diritto canonico, 268; J. NEUMANN, "Synodale und kollegiale Element im geltenden lateinischen Kirchenrecht", in Konziliarität und Kollegialität, Insbruck-Wien-München 1975, 79-80.

¹⁰⁰ P. LEISCHING, "Conferences of Bishops", Concilium 4 (1990) 86.

The decisive majority for the decisions of the conference other than decreta generalia should be determined according to respective statutes or if nothing is stated in the statutes, according to canon 119, number 2. 101 This canon adresses the general norm for collegial action, according to which if there is a quorum of majority of those who must be convoked, then an absolute majority of those who are present can make a decision. Since the bishops' conference is a collegial body, all the decisions except decreta generalia can be enacted on a majority basis and the conference is free from the rigorous conditions of decreta generalia in such cases. 102

As we have already seen, according to canon 455 § 2, only general decrees of the conference must be reviewed by the Holy See, before their promulgation. Other non-binding legislative. doctrinal or administrative decisions of the conference adopted on the basis of absolute majority, need not be reviewed by the Holy See, but are to be sent to it only for information. 103 Even though the particular decisions of the conference need not be reviewed by the Holy See, in more important decisions an intervention of the Holy See is foreseen in the corresponding canons itself. Thus the approval of the Holv See is necessary for the establishment of an interdiocesan major seminary for the territory of the conference (c. 237 § 2). convocation of a plenary council (c. 439 § 1), election of the president of a plenary council (c. 441 n. 3), publication of catechisms (c. 775 § 3), constitution of a second instance tribunal (c. 1439 §§ 1 & 2), etc.

^{101 &}quot;Ad actus collegiales quod attinet, nisi iure vel statutis aliud caveatur: 2° si agitur de aliis negotiis, id vim habet iuris, quod, praesente quidem maiore parte eorum qui convocari debent, placuerit parti absolute maiori eorum qui sunt praesentes; quod si post duo scrutinia suffragia aequalia fuerint, praeses suo voto paritatem dirimere potest; 3° quod autem omnes uti singulos tangit, ab omnibus approbari debet". Canon 119.

¹⁰² Cf. W. AYMANS, "Wesenverständnis und Zuständigkeiten der Bischofskonferenz", 53.

¹⁰³ Cf. G. GHIRLANDA, "Concili particolari e conferenze episcopali", 128-131; MUCCI, "Concili particolari e conferenze episcopali", 343-344.

The pastoral directory *Ecclesiae imago* gives some directions concerning the attitude of diocesan bishops regarding the non-binding decisions of the conference. According to the directory the "other decisions" of the conference - those which do not obtain the necessary number of votes required or which do not enter into the juridical competence of the conference - must ordinarily be adopted by each bishop and eventually given legal force by him as diocesan legislation, in a spirit of unity and charity with his brothers in the episcopate, unless there are grave reasons that prevent their application in the diocese. 104

Most of the statutes of the bishops' conferences are silent about the non-binding decisions of the conference. However, it is remarkable that a few conferences have already determined the juridical nature of such decisions. For example, the Statutes of the bishops' conference of the United States of America state: "Decisions of the conference are normally devoid of juridical binding force. Nonetheless, when passed by a majority of those voting, they should as a rule be observed by all members as an expression of collegial responsibility and in a spirit of unity and charity with their brother bishops".105

6. The Scope and Extension of the Legislative Power of the Bishops' Conferences

After having expounded the various conditions for making juridically binding decisions, here we present in a summary form all the instances provided in the common law

[&]quot;Ceteras decisiones et normas Conferentiae, vim iuridice obligandi non habentes, Episcopus pro regula suas facit, intuitu unitatis et caritatis erga confratres, nisi graves obstent rationes, quas ipse in Domino perpenderit. Has decisiones at normas nomine proprio et auctoritate propria in sua dioecesi ipse promulgat, si quando Conferentia non valeat definite circumscribere potestatem, quam nomine Christi unusquisque Episcopus personaliter fungitur". Ecclesiae imago, n. 212, Enchridion Vaticanum, vol. 4, 1480.

¹⁰⁵ I. C. IBAN, Gli statuti delle Conferenze Episcopali, II, America, 181. The same norm can be seen in the statutes of the Italian Bishops' Conference. See R. ASTORRI, Gli statuti delle Conferenze Episcopali. I, Europa, 126.

in which the bishops' conference can legislate. As we have annotated above, after the promulgation of the Code, the Secretary of State in a letter to the presidents of the bishops' conferences on 8 November 1983 asked to make particular laws in order to avoid lacuna. According to the list given by the letter, in 21 cases the conference must make particular laws and in 22 cases the conference can issue particular norms. But the letter does not distinguish between decreta generalia (i.e., juridically binding laws) which should be made according to canon 455 and other decisions. 106 After the promulgation of the Code many canonists attempted to evaluate the scope and content of the legislative power of the bishops' conference. The following study is based on the proposals and lists made by various scholars. 107 For the clarification of important points, examples from the legislation of bishops' conferences are cited in the footnotes.

6.1. General Decrees

As we have already mentioned, this category includes general legislative decrees and general executive decrees (cc. 29-33) which should be enacted and promulgated according to the conditions stipulated in canon 455.

Book II: The People of God

1. Qualifications for installation as a lector or acolyte (c. 230 \S 1): Pope Paul VI in his apostolic letter *Ministeria quaedam* of 15 August 1972 provided for lay ministers in the Latin Church. The CIC 1983 canonized the provisions of

¹⁰⁶ Communicationes 15, n. 1 (1983) 135-139; also in J. T. MARTIN De AGAR, Legislazione delle conferenze episcopali, 37-40.

¹⁰⁷ Pontificia Commissio Iuris Canonici Authentice Interpretando, Codex Iuris Canonici, auctoritate Ioannis Pauli PP. II promulgatus, Fontium Annotatione et indice Analytico-Alphabetico Auctus, 552-553; see J. H. PROVOST, "Groupings of Particular Churches", 370-372; W. AYMANS, "Wesenverständnis und Zuständigkeiten der Bischofskonferenz", 54-61; L. CHIAPPETTA, Il codice di diritto canonico, vol. 2, 896-997; J. LISTL, "Plenarkonzil und Bischofskonferenz", in Handbuch des katholischen Kirchenrechts, edited by J. Listl, H. Müller and H. Schmitz, Regensburg 1983, 314-320.

¹⁰⁸ PAUL VI, Ministeria quaedam, AAS 64 (1972) 529-534.

the aforementioned apostolic letter. According to canon 230 lay *men* can be installed on a stable or permanent basis in the ministries of lector and acolyte. The bishops' conference by its decree determines the age and qualifications of the persons to be installed in these ministries.¹⁰⁹

- 2. Formation of permanent deacons (c. 236): Vatican II desired the restoration of permanent diaconate in the Latin Church and empowered the bishops' conferences to establish it wherever it is opportune, with the approval of the Supreme Pontiff (LG 29 & AG 16). The restoration of the permanent diaconate is not prescribed as a necessity for the entire Latin Church. It is incumbent on the bishops' conference to decide (with the approval of the Apostolic See) the restoration, considering the necessity and circumstances of each place. It is also the competence of the conference to issue suitable norms for the formation of those aspiring to the permanent diaconate.
- 3. National programme of priestly formation (c. 242): "owing to the wide diversity of peoples and countries", Vatican II in its decree *Optatam totius* established only general principles of priestly formation, and stipulated that "each nation or rite should have its own programme of priestly training" (OT 1). In the Latin Church such a programme should be drawn up by the bishops' conference, taking into account the norms issued by the supreme ecclesiastical authority, and

¹⁰⁹ Unil 1990, thirty-three bishops' conferences have established norms for the ministries of lector and acolyte. See J. T. MARTIN DE AGAR, Legislazione delle conferenze episcopali, Tavola per paesi e canoni, in canon 230.

¹¹⁰ Cf. PAUL VI, Sacram Diaconatus Ordinem of 18 June 1967, AAS 59 (1967) 697-704.

¹¹¹ Obviously in formulating particular norms adapted to the socio-cultural circumstances of each nation, the conference is bound to take into consideration the directive principles and guidelines issued by the Holy See. In addition to Sacram Diaconatus Ordinem with which Pope Paul VI reconstituted the permanent diaconate in the Latin Church, the motu proprio Ad pascendum published by the same Pope on 15 August 1972 [AAS 64 (1972) 534-540] and the Circular of the Congregation for the Catholic Education, dated 16 July 1969 [Prot N. 137/69, Enchiridion Vaticanum, vol. 3, 834-837] provide norms for the formation of candidates to the permanent diaconate.

it should be approved by the Holy See (c. 242 § 1). The purpose of this programme is to adapt the universal legislation according to the particular circumstances of each place and to provide for the pastoral needs of each nation or region. 112

- 4. Permanent deacons and the liturgy of the hours (c. 276 § 2 n. 3): in the Latin Church clerics have the obligation to pray the Divine office. As for permanent deacons, they are obliged to recite the Divine office as determined by the bishops' conference.¹¹³
- 5. Clerical attire (c. 284): the common law establishes that clerics have the obligation to wear suitable ecclesiastical dress, however it does not impose a uniform dress-code on all clerics. The conferences of bishops, conforming to lawful customs, must make the final decision as regards the most convenient type of ecclesiastical dress and the one most suited to local circumstances.¹¹⁴
- 6. Norms for presbyteral council (c. 496): the universal law regulates that "in each diocese there is to be established a council of priests, that is, a group of priests who represent the *presbyterium*" (PO 7, c. 495). Taking into account the universal law (cc. 495-501), bishops conferences can issue general norms for presbyteral council in their own territory.¹¹⁵
- 7. Functions of the college of consultors to the cathedral chapter (c. 502 § 3): canon 502 introduces the new canonical institution of the college of consultors to give advice to the diocesan bishops on important matters of governance.

¹¹² The universal legislation for the Latin Church consists mainly in the norms provided by Vatican II (especially Optatam totius), by the Latin Code (De ministris sacris seu de clericis), and by Ratio fundamentalis institutionis sacerdotalis, published by the Congregation for Catholic Education on 6 January 1970, AAS 62 (1970) 321-384.

¹¹³ Thirty-seven conferences have already legislated on this canon. See LCEC, Tavola per paesi e canoni, in canon 276.

Thirty-two conferences have already decided the clerical attire for their country. [LCEC, Tavola per paesi e canoni, in canon 284]. Generally all the conferences desire that the clerics are to dress in such a way that they are identifiable as clerics. The legislation of the conferences gives importance also to the local customs and climatic conditions of each place.

Paragraph three enables the bishops' conferences to assign the functions of the college of consultors to the cathedral chapter (cf. cc. 503-510).

- 8. Term of office for pastors (c. 522): according to common law parish priests have the benefit of stability, and therefore he is to be appointed for an indeterminate period of time. But the bishops' conference can make a decree permitting the bishops to appoint a parish priest for a fixed period of time.¹¹⁶
- 9. Parish registers (c. 535 \S 1): corresponding to canon 470 of the CIC 1917, this canon prescribes that in each parish there should be registers of baptisms, marriages and deaths. The bishops' conference can prescribe by decree that some other registers are also to be kept in the parishes of its territory. 117
- 10. Support for retired priests (c. 538 § 3): the bishops' conference lays down norms for the appropriate maintenance and residence of the retired parish priests. The diocesan bishops have to act according to the norms of the conference. 118

Forty bishops' conferences have already issued general norms for presbyteral council in their country. See LCEC, Tavola per paesi e canoni, in canon 496.

¹¹⁶ For an example of a legislation by a bishops' conference, the Canadian Conference regulated that "Parish priests may be appointed for a term of six years. Such appointments may be extended for further periods of six years". [Code of Canon Law Annotated, 1310]. The Conference of Catholic Bishops of India left it to individual local Ordinaries to adopt limited tenure policies for parish priests. [Ibid., 1355].

¹¹⁷ We give some examples of registers prescribed by the Conferences: England and Wales - a register of confirmation in each parish; Ireland - the same; Nigeria - catechumenate registers for different levels of formation; Gambia, Liberia, Sierra Leone - confirmation register. In Italy, "Il registro delle Cresime, I registri dell'amministrazione dei beni e il Registro dei legali". Moreover, "in ogni Archivio parrocchiale sono raccomandati il Registro dello "status animarum", il Registro delle Prime Comunioni, il Registro della Cronaca parrocchiale. LCEC, 377. Many bishops' conferences prescribe the register of confirmation in the parish.

¹¹⁸ Unil the year 1990, twenty-eight conferences have laid down norms for adequate support and accommodation of retired priests. See, LCEC Tavola per paesi e canoni, in canon 538.

Book III: The Teaching Office of the Church

- 11. Promotion of ecumenism (c. 755 § 2): it is the responsibility of the bishops' conferences to promote and direct the participation of Catholics in the ecumenical movement in their regions. The bishops' conference can also issue practical norms in line with the various local needs and opportunities which accord with the provisions laid down by the supreme authority of the Church.¹¹⁹
- 12. Lay persons and preaching (cc. 766 & 767 § 1): lay people may be allowed to preach in a church or oratory in certain circumstances, except the homily which is reserved to a priest or deacon. The bishops' conferences can issue norms for the admission of lay persons to preach according to the needs of each country. 120
- 13. Norms for radio and television talks (c. 772 § 2): the bishops' conference is entitled by common law to issue guidelines and norms on radio and television discourses on Christian doctrine in each country according to the need and

¹¹⁹ This provision for particular legislation is specially relevant in those countries where non-Catholic Churches or ecclesial communities are present. Only fifteen bishops' conferences have already enacted norms for the promotion of ecumenism. See LCEC Tavola per paesi e canoni, in canon 755.

¹²⁰ As an example of a legislation by a bishops' conference we give here the provisions laid down by the Canadian Conference. "In accordance of the prescriptions of c. 766, the Canadian Conference of Catholic Bishops hereby decrees that non-ordained persons may be authorized by the diocesan bishop to preach in churches and chapels on the following occasions, in accord with c. 767:

^{1.} when there is no priest or deacon who can converse in the language of the people;

^{2.} when the Liturgy of the Word is celebrated without a priest or deacon;

^{3.} when seminarians who have begun their studies in theology are sent to parishes as part of their pastoral formation;

^{4.} when certain circumstances require the participation of lay persons (financial questions, special appeals, special circumstances);

^{5.} when the diocesan bishop judges it opportune.

circumstances. All are obliged to observe the norms of the

- 14. Regulation of catechumenate (c. 788 § 3): Vatican II expressed the desire that the catechumenate for adults is to be restored and brought into use at the discretion of the local ordinary (SC 64-65). The decree on the Church's missionary activity Ad Gentes (n. 14) speaks about the formation of catechumens, stating that the "juridical status of catechumens should be clearly defined in the new Code of Canon Law". But the Code leaves the regulation of catechumenate to the bishops' conference: "it is the responsibility of the bishops' conference to establish norms regarding the catechumenate, determining what should be done by catechumens and what should be their prerogatives". 121
- 15. Norms for Catholic religious formation and education (c. 804 § 1): Catholic religious formation and education are subject to ecclesiastical authorities even in the case of non-Catholic schools. This also applies to the religious education through various media of social communications. It is the responsibility of the bishops' conference to issue general norms concerning this field of activity.
- 16. Norms for the participation of clerics and religious in radio or television programmes (c. 831 § 2): it is the task of the bishops' conference to issue norms regulating the participation of clerics and religious in radio and television programmes which concern Catholic doctrine or morals in their territory. Such norms are only for clerics and religious and not for lay people. 122

¹²¹ Regarding catechumenate, see canons 851, n. 1, and 865 as well as the Ordo initiationis Christianae adultorum, published by "Sacra Congregatio pro cultu Divino" on 6 January 1972, Decretum in AAS 64 (1972) 252; and text in Enchiridion Vaticanum vol. 4, 869-949. For the juridical status of catechumens, see canon 206. The regulation of catechumenate is particularly important in mission countries.

Thirty-three bishops' conferences already established norms for the participation of clerics and religious in radio or television programmes. [See LCEC, Tavola per paesi e canoni, in canon 831]. For example, the Bishops' Conference of the Philippines regulate that "All clerics and religious who are invited to organize or participate in radio or television programmes may do so only with the permission of the competent authority". [Code of Canon Law Annotated, 1397].

Book IV: The Sanctifying Office of the Church

- 17. Regulation of the liturgy (c. 838 § 3): though the ordering of the sacred liturgy of the universal Church and the publication of liturgical books are responsibilities of the Apostolic See (c. 838 § 2 & SC 22), the bishops' conference has its own competence. The bishops' conference can: (1) prepare vernacular translations of the liturgical books; (2) make adaptations admitting elements from the traditions and cultures of individual peoples within the limits defined in the liturgical books (cf. also SC 37-40); and (3) publish translations of the liturgical books with the prior review of the Holy See. 123
- 18. Lawful celebration of sacraments (cc. 841, 838 § 3): it is the exclusive competency of the supreme authority of the Church to approve and define those things which are required for the validity of the sacraments. However, besides the supreme authority, the bishops' conference is also competent to regulate matters pertaining to their lawful celebration, administration and reception as well as the order to be observed in their celebration, in accordance with canon 838 § 3.
- 19. Norms for communicatio in sacris (c. 844 § 5): the bishops' conferences can enact general norms regarding communicatio in sacris (c. 844 §§ 2-4) for their territory after consultation with the competent authority of the interested non-Catholic Church or community.¹²⁴

For the competence of the bishops' conference regarding translations and inculturation, see The CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLLINE OF THE SACRAMENTS, The Roman Liturgy and Inculturation: IVth Instruction for the Right Application of the Conciliar Constitution on the Liturgy (nn. 37-40), Rome 1994, 27-29.

¹²⁴ Evidently this provision for particular legislation is applicable only in those places where non-Catholic Churches or ecclesial communities are present. For example, the Bishops' Conference of Gambia, Liberia and Sierra Leone stabilized that "The permission of the local diocesan bishops is required before the administration of the sacraments of penance, Eucharist and anointing of the sick to other Christians not in full communion with the Church and who cannot approach a minister of their own community.

This will only be granted in danger of death or other grave necessity judged to be such by the diocesan bishop and provided they manifest

- 20. Order of sacramental initiation (c. 851 n. 1): this canon specifies that an adult who wishes to receive baptism is to be admitted to the catechumenate. The Ordo initiationis christianae adultorum describes in detail the rites of the catechumenate, the degrees included, the ministries and offices that participate in the preparation of catechumens, etc. The bishops' conference can adapt the order of initiation and publish its own special norms in accordance with the circumstances of each territory or nation.
- 21. Manner of baptism (c. 854): according to the canon, baptism can be conferred either by immersion or by pouring. The modes of baptizing can be further determined and refined by the prescriptions of the bishops' conference, taking into account the culture and circumstances of each nation. 126
- 22. Manner of registering the baptism of adoptive children (c. 877 § 3): in the case of an adopted child, the names of the adopting parents are to be recorded in the baptism register. With regard to registering the natural parents' name, the bishops' conference can issue its own norms.
- 23. Age for Confirmation (c. 891): the canon considers the age of discretion as the most suitable age for the reception of the sacrament of confirmation. However, bishops' conferences are free to determine the suitable age of confirmation and the convenient manner of preparing those who are to be confirmed.
- 24. The Confirmation register (c. 895): just as for baptism, the reception of confirmation is also to be registered with sufficient details. The bishops' conference can prescribe that in its territory a register should be kept also in the parochial archive (according to the common law it should be kept in the diocesan curia).¹²⁷

Catholic faith in these sacraments and are properly disposed". Code of Canon Law Annotated, 1348.

¹²⁵ Enchiridion Vaticanum, vol. 4, 868-949.

About the manner of baptism, the Nigerian bishops' conference determined that: "The Episcopal Conference upholds baptism by infusion. However, baptism by immersion may be allowed by the local Ordinary by way of experiment". Code of Canon Law Annotated, 1380.

¹²⁷ About twenty-six bishops' conferences have already legislated that a register be kept in each parish. See LCEC, Tavola per paesi e canoni, in canon 895.

- 25. The confessional (c. 964 § 2): the bishops' conference is granted the faculty to issue norms concerning the confessional in its territory, but "with the proviso that confessionals fitted with a fixed grille between the penitent and the confessor, always be available in an open place".
- 26. Age for orders (c. 1031 § 3): according to common law, the required age for priesthood is the completion of the twenty-fifth year and for the diaconate (men destined for presbyterate) the completion of twenty-third year (1031 § 1). With regard to the age, the law makes a distinction between unmarried permanent deacons and married ones: unmarried the completion of twenty-five years; married he completion of thirty-five years (1031 § 2). The bishops' conference has the right to require an older age for orders in all these cases according to the local conditions.
- 27. Regulation of betrothal (1062 § 1): the regulation of promise of marriage or betrothal is left to the bishops' conference. The conference has to formulate sufficient norms taking into consideration the existing customs and civil laws of each territory.
- 28. The investigation of freedom to marry (c. 1067): it is the responsibility of the bishops' conference to issue norms concerning the examination of the parties involved and the publication of marriage banns or other appropriate means of enquiry to be carried out as a pre-requisite for marriage, taking into consideration the specific socio-cultural circumstances and the civil law of each country.
- 29. Higher age for the celebration of marriage (c. 1083 § 2): the age prescribed by the Code for the valid celebration of marriage is the completion of the sixteenth year for men and the fourteenth year for women (c. 1083 § 1). The bishops' conference can establish a higher age for the lawful celebration of marriage, taking into consideration the specific sociocultural circumstances and the civil law of each country. 128

¹²⁸ About thirty bishops' conferences have already legislated on this canon. [See LCEC, Tavola per paesi e canoni, in canon 1083]. Some conferences prescribe the civil law requirements of the country concerning age.

- 30. Particular marriage rituals (c. 1120): the bishops' conference can draw up its own rite of marriage, taking into account the local customs and traditions which are in harmony with Christianity. Such a rite of marriage should be reviewed by the Holy See. 129
- 31. The registration of marriages (c. 1121 § 1): the bishops' conference can prescribe the method according to which the notations are to be made in the marriage register.
- 32. The manner of declarations and promises in a mixed marriage (c. 1126): in order to obtain permission for a mixed marriage, the Catholic party has to make certain declarations and promises regarding the preservation of Catholic faith, bringing up of the children in the Catholic faith, etc. (c. 1125). The bishops' conference must: (1) establish the manner in which these declarations and promises are to be made; (2) determine how they are to be established in the external forum; and (3) determine how the non-Catholic party is to be informed of them.
- 33. Dispensation from canonical form in a mixed marriage (c. 1127 § 2): in grave difficulties, the local ordinary of the Catholic party can dispense from the observance of canonical form in a mixed marriage in individual cases under certain conditions. The bishops' conference is to establish norms whereby this dispensation may be granted in a uniform manner. 130

¹²⁹ The review will be accomplished by the Congregation for Divine Worship and the Discipline of the Sacraments. About the marriage ritual, see also CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, The Roman Liturgy and Inculturation, 26.

¹³⁰ As an example for a particular legislation on this matter we present the norms issued by the Bishops' Conference of England and Wales. According to the Conference, "Reasons for granting dispensations from canonical form should concern in some important way:

^{1.} The spiritual well-being of the parties, especially if the non-Catholic party is attached to the familial faith;

^{2.} The tranquillity and peace of their personal or family relationships;

^{3.} Or be based on the special relationship that the non-Catholic party has to a minister or non-Catholic place of worship

- 34. The material for the construction of a fixed altar (c. 1236 § 1): the canon recommends that the table of a fixed altar is of natural stone, but even some other solid and worthy material may be used if the bishops' conference so judges.
- 35. Abolition or transfer of holy days of obligation (c. 1246 § 2): in addition to Sundays, the canon determines ten holy days of obligation for the Latin Church: the Nativity of Our Lord Jesus Christ, Epiphany, Ascension, Corpus Christi, Mary the Mother of God, her Immaculate Conception, her Assumption, St Joseph, the Apostles SS Peter and Paul and All Saints (1246 § 1). However, the bishops' conference can suppress certain holy days of obligation or transfer them to a Sunday with the prior approval of the Apostolic See. It can add also the national or local holy days of obligation (cf. c. 1244).¹³¹
- 36. Abstinence from meat on Fridays (c. 1251): abstinence from meat, or from some other food as determined by the bishops' conference, is to be observed on all Fridays, unless a solemnity should fall on a Friday. Abstinence (as mentioned above) and fasting are to be observed on Ash Wednesday and Good Friday. The Code empowers the bishops' conference

The power to grant a dispensation from canonical form is in the hands of the local Ordinary of the Catholic party. If the proposed marriage is to take place outside his diocese, he is required by c. 1127 § 2 to consult the Ordinary of the place of the celebration before granting the dispensation.

If a dispensation from form is granted, for validity some public form of celebration is required (c. 1127 § 2). Care must be taken that the requirements of both canon law and civil law be fulfilled". Code of Canon Law Annotated, 1338-1339.

transferred some of the holy days of obligation (which do not fall on a Sunday) to the nearest Sunday, preceding or following the feast. Example for suppression of holy days: according to the norms of the Nigerian Bishops' Conference, "the following celebrations are suppressed as holidays of obligation and are to be celebrated as solemnities on the day in which they fall: the feast of Mary the Mother of God; the feast of St Joseph; the feast of the Apostles Peter and Paul; and the feast of the Immaculate Conception". [Code of Canon Law Annotated, 1387]. So far none of the conferences has established a national or local holiday of obligation.

¹³² For regulations concerning both abstinence and fasting, cf. Ap. Const.

to substitute another penance to be observed on Fridays in place of abstinence from meat.

37. Observance of fast and abstinence (c. 1253): this canon, obviously connected with the previous one, bestows on the bishops' conference the faculty: (1) to determine more particular ways in which fasting and abstinence are to be observed; (2) and to substitute in whole or in part in place of abstinence or fasting other forms of penance, especially works of charity and exercises of piety. Thus the canon provides greater flexibility to the practice of penance in such a way that it is able to be adapted to the conditions and circumstances of each country or region. 133

Book V: The Temporal Goods of the Church

38. Regulation of collections and offerings (c. 1262): the bishops' conference can lay down general norms for collections and offerings which the faithful are obliged to contribute to the support of the Church.

Paenitemini, chapter III, AAS 58 (1967) 183; Reply of the S. Congregation of the Council of 24 February 1967, AAS 59 (1967) 229.

As an example, we give here the regulation of the Indian Bishops' Conference: "This Conference [the CCBI] decrees that our faithful fulfill the obligation of abstinence by choosing at least one of the following forms of prayer / penance / works of charity:

^{1.} Attending Mass or making a 15-minute visit to the Blessed Sacrament or doing 15 minutes of reading of the Bible or a 15-minute meditation on the Passion of Our Lord or making the Way of the Cross;

^{2.} Missing breakfast or any one meal;

^{3.} Taking strictly vegetarian meals (avoiding fish and eggs as well);

^{4.} Abstaining from alcohol (for those who drink);

^{5.} Abstaining from smoking (for those who smoke);

^{6.} Abstaining from beverages (like tea / coffee) between meals;

^{7.} Giving 10% of one's daily earnings in charity;

^{8.} Abstaining from meat for those for whom meat is part of their regular diet.

The regional council or the bishop of the diocese may suggest other choices or restrict the above list of 'penances' as necessary'. Code of Canon Law Annotated, 1356.

- 39. Fund-raising (c. 1265 § 1): private persons whether physical or juridical are forbidden to raise funds for any pious or ecclesiastical institution or purpose without the written permission of the Ordinaries concerned. The bishops' conference has the right to draw up rules regulating fundraising. Such rules are to be observed by all including those persons who are mendicants according to the institute to which they belong.
- 40. Management of benefices (c. 1272): the decree *Presbyterorum ordinis* decreed that "the so-called system of benefices is to be abandoned or reformed" (n. 20). The Code has not suppressed the benefices in a general way, but recommended the respective bishops' conferences to supervise the management of existing benefices by appropriate norms agreed with and approved by the Apostolic See.
- 41. Definition of acts of extraordinary administration (c. 1277): the diocesan bishop needs the consent of the financial council and the college of consultors in order to perform acts of extraordinary administration besides cases explicitly mentioned in universal law or in the charter of a foundation. The difficulty lies in determining what are to be regarded as acts of extraordinary administration. The canon entrusts this task to the bishops' conference. 134
- 42. Determination of the minimum and maximum amount of alienation (c. 1292 § 1): the bishops' conference of each region is to establish both the minimum and maximum sums regarding alienation when the stable or permanent patrimony is concerned.
- 43. The leasing of ecclesiastical goods (c. 1297): after considering the local circumstances, each bishops' conference should establish norms about the leasing of ecclesiastical goods. Such norms may designate such things as the proper authority for permission and the conditions for entering a contract for lease.

¹³⁴ Thirty-nine bishops' conferences have already fixed the criteria for the determination of extraordinary administration in their countries. See LCEC, Tavola per paesi e canoni, in canon 1277.

Book VII: Judicial Procedures

- 44. Lay persons as judges (c. 1421 § 2): in all dioceses, the diocesan bishop is to appoint diocesan judges, who should be clerics. The bishop can also appoint sufficiently qualified lay persons as judges if this is permitted by a law of the bishops' conference. In case of necessity one of the lay judges can be employed to form a collegiate tribunal.¹³⁵
- 45. Cases to a single clerical judge (c. 1425 § 4): the bishops' conference can legislate that cases reserved to a collegiate tribunal can be entrusted to a single clerical judge, for a trial of first instance, if in some places it is impossible to establish a collegiate tribunal.¹³⁶
- 46. Avoiding a trial (c. 1714): the Code proposes two ways of avoiding trial: settlement or reconciliation and arbitration (c. 1713). The bishops' conference can enact laws for a settlement, compromise or a trial by arbiters.

6.2. Particular Administrative Decrees

Particular administrative decrees do not develop general laws applicable to many cases, but regulate a particular concrete case. These decisions are made on the basis of absolute majority, provided an absolute majority of those who must be summoned are present. Particular administrative decrees are free from the rigorous conditions of the general decree stipulated in canon 455.

¹³⁵ The possibility of having the laity as judges in ecclesiastical tribunal is a major change from the legislation of the CIC 1917. This change was first introduced by Pope Paul VI in the motu proprio Causas Matrimoniales, promulgated on 28 March 1971, AAS 63 (1971) 441-446, (n. V § 1); cf. also Communicationes 10 (1978) 231; 16 (1984) 54-55. So far twenty-seven bishops' conferences permit lay persons to be appointed as judges. LCEC, Tavola dei canoni e paesi, in canon 1421.

¹³⁶ This canon is introduced to accommodate the substantial increase in the number of marriage nullity cases. At the same time, we see a decrease in the number of available competent juridical personal. The bishops' conference can permit this arrangement only for as long as the impossibility persists.

Book 1: The People of God

- 1. Erection of a national inter-diocesan seminary with the approval of Apostolic See (c. 237 § 2)
- 2. Erection of a national public association in its own territory (c. 312 § 1 n. 2)
- 3. Direction and supervision of a national public association (c. 315)
- 4. The right to receive the recourse of a member dismissed from a national public association (316 § 2)
- 5. Designation of a supreme moderator and chaplain for a national public association (c. 317 § 1)
- 6. Designation of a trustee or commissioner for a national public association when serious reasons so require (c. 318 § 1)
- 7. Removal of a moderator or chaplain of a national public association (c. 318 § 2)
- 8. The administration of the goods of a national public association (c. 319 § 1)
- 9. Suppression of associations (c. 320 $\S~2)$
- 10. Acquisition of juridical personality by a private association (c. 322 § 1)
- 11. Election of representatives for the ordinary general assembly of the synod of bishops (c. 346 § 1)
- 12. Ensuring suitable and worthy provisions for the upkeep of resigned bishops (c. 402 § 2)
- 13. Decision to celebrate a plenary council (c. 439 § 1)
- 14. Important organizational tasks for the celebration of a plenary council (c.441)
- 15.Determination of the number of major superiors of religious institutes and societies of apostolic life in a plenary council (c. $443 \S 3 n. 2$)
- 16 Invitation of presbyters and other members of the Christian faithful to a plenary council (c. 443 § 4)
- 17. Invitation of other guests to the plenary council (c. 443 § 6)

Book III: The Teaching Office of the Church

- 18. Publication of particular catechisms for the territory with the approval of the Apostolic See (c. 775 § 2)
- 19. Erection of a catechetical office to furnish assistance to the individual dioceses in catechetical matters (c. 775 § 3)
- 20. Protection and adequate pastoral care of persons who come to the territory for the sake of work or study (c. 792)
- 21. Providing for Catholic universities and faculties (c. 809)
- 22. Ensuring the faithful observance of the principles of Catholic doctrine in universities and faculties within its territory (cc. 810 § 2 & 809)
- 23. Establishing institutes for higher religious studies (c. 821)
- 24. Exercising vigilance, passing judgment, and even taking corrective action against publications and media (c. 823 § 2)
- 25 Drawing up a list of censors for books or even establishing a commission of censors (c. 830 § 1)
- 26. Determining cases of grave necessity when baptized non-Catholics may receive Catholic sacraments of Eucharist, penance, and anointing (c. 844 § 4)

Book V: The Temporal Goods of the Church

- 27. Where there is no properly organized system of social provision for the clergy, ensuring that a fund is established to furnish adequate social security for them (c. 1274 § 2)
- 28. Establishing a federation of diocesan institutes or association for the support of the clergy (c. 1274 § 4)

Book VI: Sanctions in the Church

29. Issuing penal precepts: the bishops' conference can issue penal precepts against the violation of its own laws (c. 1319)

Book VII: Judicial Procedures

30. Establishment of the second instance court (c. 1439): with the approval of the Apostolic See, several diocesan bishops may agree to establish a single tribunal of first instance in place of diocesan tribunals (c. 1423). In such a case the bishops' conference must establish a tribunal of second instance with the approval of the Apostolic See unless these dioceses are all suffragans of the same archdiocese (1439 §1). The bishops' conference can establish one or several tribunals of second instance even beyond the cases mentioned above (1439 § 2). The bishops' conference has all the powers over these tribunals which the diocesan bishop has over his tribunal (1439 § 3).

6.3. Participation Right

The participation right of the bishops' conference in the decision-making process of the supreme authority of the Church enables the conference to assist the Holy See by providing its own observations regarding matters which concern its territory. It is greatly desirable that the Holy See seeks the opinion of the bishops' conference and thus ensures its participation as far as possible even in matters not indicated in the Code before making decisions regarding its territory. According to the common law, the bishops' conference has the right to participate in the decision-making process of the supreme authority of the Church or of the diocesan bishops in the following cases:

- 1. Erection of personal prelatures (c. 294): the competent authority to establish a personal prelature is the Apostolic See, but only after consultation with the bishops' conference involved.
- 2. Review of the statutes of a national private association (cc. 299 \S 3, 312 \S 1 n. 2), if it is to be recognized by the Church.
- 3. Consent of the bishops' conference in order that a national association may be called "Catholic" (c. 300).
- 4. Approval of the statutes (c. 314): the statutes of any national public association as well as their revision or change require the approval of the bishops' conference.
- 5. The right to confirm as moderator of a national public association the person elected by the association (c. 317 § 1).

- 6. Erection of a personal diocese (c. 372 § 2): particular Churches can be erected by the supreme authority of the Church within the same territory for the community of a different rite or for some other groups. However, before establishing such a particular Church, the supreme authority must listen to the bishops' conference concerned.
- 7. Composing a list of worthy candidates for episcopacy (377 § 2): such a list is usually composed by the bishops of a province, but if circumstances suggest, the bishops of a conference can also compose a list of worthy presbyters and send it to the Apostolic See.
- 8. Ecclesiastical regions (c. 433 § 1): the bishops' conference can propose to the Apostolic See the erection of an ecclesiastical region within its territory (c. 434).
- 9. Approving editions and translations of the Sacred Scriptures (c. 825 § 1): also permitting ecumenical translations of the Sacred Scriptures with notes (c. 825 § 2).
- 10. Criteria for general absolution (c. 961 § 2): general absolution can be granted only in danger of death and if there is a grave necessity (c. 961 § 1). It is the diocesan bishop who judges whether the conditions required by law exist. However, together with other members of the conference, he can make certain criteria to determine the cases of such necessity.
- 11. Approval for lay persons to assist at marriages (c. 1112 § 1): diocesan bishops can delegate lay persons to assist at marriages, if the bishops' conference has given its prior approval (the permission of the Apostolic See is also necessary).
- 12. Authorization of a shrine (c. 1231): for a shrine to be considered as national, the approval of the bishops' conference is necessary.
- 13. Statutes of shrines (c. 1232): the approval of the bishops' conference is necessary for the statutes of a national shrine.

7. Judicial Powers of the Bishops' Conference

Our analysis of the powers of the synod of bishops of the Eastern Churches highlighted that the synod functions also as the supreme tribunal within a patriarchal or major archiepiscopal Church under the authority of the Roman Pontiff who is the *summus iudex* of the Catholic Church. In order to ascertain whether the bishops' conference has any judicial power, one should evaluate the whole judiciary system of the Latin Church.

7.1. The Tribunals of First Instance

According to canon 1419 § 1, "in each diocese and for all cases which are not expressly excepted in law, the judge of first instance is the diocesan bishop". As it is evident from the canon the diocesan bishop is competent to judge all contentious and penal cases occurring within the territorial boundaries of the diocese entrusted to his care. But he is incompetent to judge those cases which are expressly excepted by law, such as the cases reserved to the Roman Pontiff (c. 1405); cases of religious because of the competence of their own tribunal (c. 1427 § 1-2); cases destined for an inter-diocesan tribunal, instituted in accordance with canon 1423; and cases concerning the rights or temporal goods of juridical persons represented by the bishop (c. 1419 § 2) like the diocese (c. 393), the diocesan curia (c.469) the diocesan seminary (c. 238 § 2), etc.

The diocesan bishop can exercise his judicial power either personally or through others, namely through his tribunal. The diocesan tribunal consists of the judicial vicar (c. 1420 § 1), associate judicial vicars if any (c. 1420 § 3), judges (c. 1421), auditors (c. 1428), a promoter of justice (c. 1430), a defender of the bond (c. 1432) and notaries (c. 1437).

According to canon 1423 several diocesan bishops can agree to establish one tribunal of first instance in their dioceses, in the place of diocesan tribunals. Should the bishops agree to establish an interdiocesan or regional tribunal, the first step is to receive the approval of the Apostolic Sec. 137

¹³⁷ The approval is given by the supreme tribunal of the Apostolic Signatura. See Pastor bonus Art. 124. Such a tribunal can be established in a patriachal Church by the patriarch with the consent of the synod of bishops and in some cases the synod of bishops itself within the territory of the same Church without any approval from a higher authority. See CCEO c. 1067.

The new tribunal is one of first instance and as such takes the place of the pre-existing diocesan tribunals. The administration of the new tribunal is entrusted either to the "group of bishops" involved or to a bishop, designated by them, who has all the powers which the diocesan bishop has for his tribunals. It is to be particularly noted that the interdiocesan tribunal is only a tribunal of first instance, and it enjoys only the powers of a diocesan tribunal.

Canon 1427 determines the competent tribunal of first instance for religious. According to the canon only clerical religious institutes of pontifical right have judicial power. The canon determines who is to be the judge in the following situations: (a) if the controversy is between either religious or houses of the same institute, it is the provincial superior (§1); (b) if the controversy is between members of an autonomous monastery, it is the local abbot (§1); (c) if the controversy is between two provinces of the same institute, it is the supreme moderator (§2); (d) if the controversy is between two autonomous monasteries, it is the abbot superior of the monastic congregation (§2); (e) in all other cases involving religious, the diocesan tribunal judges in the first instance (§3).

7.2. The Tribunal of Second Instance

From the diocesan tribunal normally appeal is made to the metropolitan tribunal (c. 1438), and in cases in first instance tried before the metropolitan, the appeal court is the tribunal which the metropolitan has permanently designated with the approval of the Apostolic See (c. 1438 n. 2). For the interdiocesan tribunal the bishops' conference can establish a tribunal of second instance with the approval of the Apostolic See, unless the bishops who agreed to have a common tribunal are all'suffragans of the same archdiocese (1439 § 1). The bishops' conference can establish one or several tribunals of second instance with the approval of the Apostolic See, even for other cases (1439 § 2). The bishops' conference or a bishop designated by it has all the powers over the tribunals of the second instance which the diocesan bishop has over his tribunal (c. 1439 § 3). From a decision of a religious tribunal in the terms of canon 1427 § 1, the appeal

is to be made to the tribunal of the supreme moderator of the institute, if these cases have been decided by a provincial superior or to the tribunal of the abbot superior of the monastic congregation, in those cases decided by a local abbot.

Although provision is made for the trial of second instance at the local level, the appellants are free in accord with canon 1444 § 1 number 1 to appeal directly to the Roman Rota for second instance. Therefore, the appellants can freely decide whether their case is to be tried in the second instance in the domestic court or in the Roman Rota.

7.3. The Tribunal of Third Instance, the Roman Rota

The Roman Rota consists of a college of judges, selected by the Supreme Pontiff from all the corners of the world. The tribunal is presided over by a dean, appointed by the pope from among the judges, for a specific term of office. The Roman Rota is the ordinary tribunal of the Apostolic See constituted to hear appeals from the whole Church. The purpose of the Rota is: a) to safeguard rights within the Church; b) to foster unity of jurisprudence; and c) to provide assistance to lower tribunals by virtue of its own decisions. 140

The Roman Rota is primarily an appeal court for the third and further instances. It judges in the third or further instances cases which have been processed by the Roman Rota itself or by any other tribunal, unless there is a question of an adjudged matter.¹⁴¹ Though the faculty to consider cases

^{138 &}quot;Rota Romana iudicat: 1° in secunda instantia, causas quae ab Ordinariis tribunalibus primae instantiae diiudicatae fuerint et ad Sanctam Sedem per appellationem legitimam deferantur". CIC canon 1444 § 1.

Pastor bonus, Art. 127; Normae Romanae Rotae tribunalis, Art. 1, AAS 86 (1994) 509; cf. Annuario pontificio 1997, 1223-1226.

[&]quot;Hoc Tribunal instantiae superioris partes apud Apostolicam Sedem pro more in gradu appellationis agit ad iura in Ecclesia tutanda, unitati iurisprudentiae consulit et, per proprias sententias, tribunalibus inferioribus auxilio est". *Pastor bonus*, Art. 126.

¹⁴¹ CIC canon 1444 § 1 n. 2; Pastor bonus, Art. 128, n. 2.

of third instance is given to the Rota of the Nunciature of Spain and to the Tribunal of the Primate of Hungary¹⁴² (by way of exception), the Roman Rota is the normal appeal court of third instance. In the Latin Church no court below the Roman Rota (with the exceptions mentioned above) is competent to try a case at third instance. In the course of the revision of the Code, some attempts were made to admit a general permission for tribunals of third instance at the local level. None of these was accepted, principally on the ground that such an arrangement would, in effect, eliminate the apostolic tribunal of the Roman Rota which has the important function of ensuring as far as possible a unity of jurisprudence throughout the Church.¹⁴³

Though the Roman Rota is mainly an appeal court of third instance, it hears in second instance those cases judged at first instance by ordinary tribunals of first instance and referred to the Holy See by a lawful appeal. 144 Furthermore it judges in first instance bishops in contentious cases; the abbot primate or the abbot superior of a monastic congregation, and the supreme moderator of a religious institute of pontifical right; dioceses and other ecclesiastical persons, physical or juridical, which have no superior other than the Roman Pontiff (c. 1405 § 3); and other cases which the Roman Pontiff, either on his own initiative or at the request of the parties, has reserved to his tribunal and has entrusted to the Roman Rota. 145

¹⁴² PIUS XII, "Apostolico Hispaniarum nuntio", AAS 39 (1947) 160-161; Cf. The Code of Canon Law: A Text and Commentary, 959; Z. GROCHOLEWSKI, "I tribunali apostolici", in M. Theriault & J. Thorn, eds., The New Code of Canon Law (Proceedings of the 5th International Congress of Canon Law, August 19-25, 1984) Ottawa 1986, 461-462.

[&]quot;Nonnulli proposuerunt ut admittatur constitutio tribunalis 3ae instantiae in singulis regionibus, salvo iure adeundi tribunal S.R. Rotae. Consultoribus propositio non placet, quia hoc modo evacuaretur tribunal Apostolicum, per quod assequitur bonum non parvi momenti scilicet uniformitas iurisprudentiae pro tota Ecclesia. Ceterum huiusmodi propositio superat facultates Coetus aliquid in hac materia decernendi". Communicationes 10 (1978) 243; see also Communicationes 16 (1984) 59.

¹⁴⁴ CIC canon 1444 § 1 n. 1; Pastor bonus, Art. 128, n. 1.

^{145.} CIC canon 1444 § 2; Pastor bonus, Art.129.

After enlisting those who have the privilege to be judged by the Roman Rota, the canon 1405 § 3 ends thus: "dioceses and other ecclesiastical persons, physical or juridical, which have no superior other than the Roman Pontiff". Certainly in addition to dioceses, territorial prelatures, territorial abbacies, vicariates apostolic, prefectures apostolic and permanently established apostolic administrations which are equated with dioceses in the Latin Code (c. 368) are judged by the Roman Rota in the first instance.

Physical persons who have no superior other than the Roman Pontiff include secretaries of the Pontifical Councils (who are not bishops), under secretaries of Congregations, the Assessor and under secretary of the Secretariat of State, the Promoter of Justice, the Promoter of Faith, the undersecretaries of the Pontifical Councils, etc. Juridical persons like the Congregations, Pontifical Councils and other offices of the Roman Curia, the numerous Roman pontifical institutes, universities and colleges which are excepted from the jurisdiction of the local ordinaries and directly depend upon the Holy See are also judged in first instance by the Roman Rota. 146

7.4. The Supreme Tribunal of Apostolic Signatura

The supreme tribunal of Apostolic Signatura is composed of twelve cardinals nominated by the Roman Pontiff. The head of the tribunal is the prefect (one of the cardinals) who is assisted in his task by the secretary, the promoter of justice, the defender of the bond and the undersecretary. The tribunal is divided into two sections: the first section deals with judicial matters; the second section handles all administrative matters. The supreme tribunal has a threefold competence:

¹⁴⁶ Cf., R. FUNGHINI, "La competenza della Rota Romana", in Le "Normae" del tribunale della Rota Romana", (Studi Giuridici XLII), Città del Vaticano 1997, 159.

Normae speciales in Supremo Tribunali Signaturae Apostolicae ad experimentum servandae, Enchiridion Vaticanum, vol. 8, 524-525; cf. Annuario pontificio 1997, 1221.

- 1. Judicial competence: it judges challenges of various kinds against the decisions of the Rota, exceptions of suspicion and other cases against auditors of the Roman Rota in the performance of their duties, and conflicts of competence between first instance tribunals which are not subject to the same appeal tribunal (c. 1416). These cases are dealt with by the first section of the tribunal. 148
- 2. Contentious administrative competence: the Signatura handles all controversies arising from administrative acts; thus it is the place of final recourse against an administrative decree (cc. 1732-1739); it deals with other administrative controversies referred to it by the Roman Pontiff or by departments of the Roman Curia. It is also the competent forum to resolve conflicts of competence that may arise among the various departments of the Roman Curia. All these matters are handled by the second section of the Signatura. 149
- 3. Administrative competence: the supreme tribunal is competent to oversee the proper administration of justice all over the world. The Signatura has regular contact with all the tribunals of the Latin Church, receiving from them an annual report of the tribunal's activity. The Signatura takes measures against advocates and procurators, if this is necessary. It can empower, for particular reasons, a lower tribunal to deal with a case for which it is not competent by law. It deals with petitions presented to the Apostolic See for obtaining the commission of a case to the Roman Rota or some other favour relative to the administration of justice. The Signatura is also competent to promote and approve the establishment of interdiocesan or regional tribunals of first and second instance treated in canons 1423 and 1439. 150

¹⁴⁸ See CIC canon 1445 § 1; Pastor bonus, Art. 122; Normae speciales, Art. 17, Enchiridion Vaticanum, vol. 8, 533; The Canon Law Letter and Spirit, 839.

¹⁴⁹ CIC canon 1445 § 2; Pastor bonus, Art. 123.

CIC canon 1445 § 3; Pastor bonus, Art. 124; Normae speciales, Art. 18-19, Enchiridion Vaticanum, vol. 8, 533-537.

Our analysis of the judiciary system of the Latin Church demonstrates that the bishops' conference has practically no judicial power. The tribunal of third instance is always the Roman Rota and the second instance if the appellant so wishes. However the conference is empowered: to constitute a tribunal of second instance with the approval of the Apostolic Signatura (c. 1439) if an interdiocesan or regional tribunal of first instance has been constituted in accordance with the norm of canon 1423; to allow lay persons to be appointed judges (c. 1421 § 2); and to permit diocesan bishops to entrust cases reserved to a collegiate tribunal to a sole clerical judge, if it should happen that it is impossible to constitute a college of judges (1425 § 4).

8. Bishops' Conference and Appointment of Bishops

In the past, emperors and civil governments in many countries enjoyed the privileges sanctioned by custom or agreement to elect, nominate, present or designate candidates for episcopal office. In this background, the 1917 Code of Canon Law established that the bishops are freely appointed by the Roman Pontiff (c. 329). The Code did not completely abolish the possibility of election or presentation of candidates for the episcopate by civil governments or other bodies that had this privilege from the Holy See. But the Code ordered that the persons elected or presented by those who have such a right must have the qualifications determined in the Code and the Holv See has the exclusive right to pass judgment on the suitability of any candidate for the episcopate. 151 The Code further states that any candidate, even though elected, presented or designated by the civil government cannot become bishop without canonical provision, the grant of which

^{151 &}quot;Etiam electus, praesentatus vel quoque modo ab illis designatus, qui privilegio a Sancta Sede concesso eligendi, paesentandi seu designandi gaudent debet memoratis qualitatibus pollere". CIC 1917 canon 331 § 2.

[&]quot;Iudicare num quis idoneus sit, ad Apostolicam Sedem unice pertinet". CIC 1917 canon 331 § 3.

is the exclusive right of the Roman Pontiff.¹⁵² Thus, two procedures existed in the CIC 1917 for the designation of bishops: free and direct appointment by the Roman Pontiff or confirmation of the elected by the Roman Pontiff.

Vatican II did not deal with the procedure for the appointment of bishops, but declared that "the right of nominating and appointing bishops belongs properly, specially and of itself exclusively to competent ecclesiastical authority" (CD 20). After affirming the complete autonomy of the Church to install bishops without any interference from civil authorities, the council states:

Hence, in order to safeguard the liberty of the church and to promote the welfare of the faithful in a more suitable and expeditious way, it is the wish of this council that henceforward civil authorities should no longer be granted rights or privileges to elect, nominate, present or designate candidates for episcopal office. The synod acknowledges with gratitude and greatly appreciates the good will of civil authorities towards the church and with greatest respect requests that, after consultation with the apostolic see, they of their own accord be willing to renounce the aforesaid rights and privileges which they enjoy at present by agreement or custom (CD 20).

In accordance with the request of the Council, many civil governments through new agreements or concordats conceded their right to elect or nominate candidates to the episcopal office.

The Apostolic Letter of Pope Paul the VI *Ecclesiae Sanctae*, published on 6 April 1966, delineates the competence of the bishops' conference regarding the nomination of Bishops. According to the Letter, "While the right of the Roman Pontiff freely to nominate and institute bishops remains intact and without prejudice to the discipline of the

^{152 &}quot;Cuilibet ad episcopatum promovendo, etiam electo, praesentato vel designato a civili quoque Gubernio, necessaria est canonica provisio seu institutio, qua Episcopus vacantis dioecesis constituitur, quaeque ab uno Romano Pontifice datur". CIC 1917 canon 332 § 1.

Eastern Churches, bishops' conferences in accordance with the laws laid down by the Apostolic See, or yet to be laid down, shall after taking prudent counsel each year propose in secret to the Apostolic See the names of candidates among ecclesiastical persons to be promoted to the office of bishop in their territory". Thus an official document of the Church for the first time acknowledged the competence of the conference to propose the names of worthy candidates to the Apostolic See for appointment.

Later, on 25 March 1972, the Council for Public Affairs of the Church through the decree *Episcoporum Delectum* promulgated certain norms which further regulated the procedure for the appointment of Bishops in the Latin Church. The procedure of the new Latin Code (canon 377) which we analyze below is a synthesis and accurate articulation of the norms established by *Christus Dominus*, *Ecclesiae Sanctae* and the decree *Episcoporum Delectum* of 1972.

1. The Triennial List: according to canon 337 § 2, at least every three years the bishops of an ecclesiastical province have to draw up in secret a list of priests worthy and suitable for the episcopate. In principle, the right to compile the list belongs to the assembly of the bishops of a province (cc. 431-432), convened and presided over by the metropolitan. If circumstances suggest it the list can be also formulated by the bishops' conference. Is addition to the members of the diocesan clergy, the list can include also those of institutes of consecrated life. The metropolitan or the president should forward the list of priests to the Apostolic See through the apostolic nuncio. According to article 10 of the Norms stablished by Episcoporum Delectum, the bishops' conference of a country can prescribe, with a two-thirds majority of votes, that the list prepared by the assembly of each province, be

¹⁵³ Ecclesiae Sanctae, n. 10, AAS 58 (1966) 763.

Normae de promovendis ad Episcopale ministerium in Ecclesia Latina, AAS 64 (1972) 386-391.

¹⁵⁵ Cf. Normae de promovendis ad Episcopale ministerium in Ecclesia Latina, Art. 2 & 3, AAS 64 (1972) 387-388.

submitted to its president in order that he might give his own observations and informations, based on the general characteristics of the country. The conference can also establish that observations about the list shall be made by the permanent council of the conference or a special committee presided over by the president of the conference. 156

The collegial compilation of the list does not restrict the right of every bishop individually to make known to the Apostolic See the names of priests whom he thinks are worthy and suitable for the episcopal office (c. 337 § 2). It is evident that the diocesan bishop, who knows the priests of his diocese, can ascertain who is more suitable and worthy for the episcopal office within his territory. Thus two lists of candidates may be always available at the Apostolic See: a) the list collegially compiled by the bishops of the province or bishops' conference; b) the list forwarded by each individual bishop.

2. Ternus for the appointment of a diocesan bishop or a coadjutor bishop (c. 337 § 3): this is a short list of candidates. known as ternus, prepared by the papal legate when the appointment of a new diocesan bishop or coadjutor bishop becomes necessary. In the preparation of this list the papal legate must seek the suggestion of the metropolitan and the suffragans of the province concerned as well as the proposals of the president of the bishops' conference. The legate has to approach each bishop of the province personally; he cannot convoke an assembly and seek their suggestions. He is required to seek the views of some members of the college of consultors and of the cathedral chapter. If he judges it expedient, the legate is to seek individually, and in secret. the opinions of some clerics, religious and laity. At the end the legate must send the result of his consultation, together with his own opinion, to the Apostolic See. Though the papal legate is not bound by the list drawn up by the bishops of the province or the bishops' conference, he should at least take it into consideration.

Normae de promovendis ad Episcopale ministerium in Ecclesia Latina, Art. 10, AAS 64 (1972) 390.

- 3. The suggestion of candidates for an auxiliary bishop: the papal legate is not involved in the procedure for the selection of suitable candidates for the office of an auxiliary bishop. The diocesan bishop himself, who judges that his diocese requires an auxiliary bishop, is to prepare a list of at least three suitable priests and forward the same to the Apostolic See. In the preparation of the list he may take into account the list previously made by the bishops of the province, and he may consult at least the metropolitan and the suffragans of his province, the president of the bishops' conference and some members of the college of consultors and cathedral chapter.¹⁵⁷
- 4. The appointment of a new bishop in the Latin Church: according to canon 337 § 1, "The Supreme Pontiff freely appoints Bishops or confirms those lawfully elected". There are a few Latin dioceses in Europe, for example some dioceses in Germany, Salzburg in Austria, Chur, St. Gallen and Basel in Switzerland, in which the Cathedral chapter elects the bishop, subject to confirmation by the pope. With the exceptions mentioned above, in the Latin Church bishops are freely appointed by the Roman Pontiff. The pope, according to the present law, is absolutely free to appoint whom he wishes, since he is not bound to appoint from any of the above-mentioned lists. 159
- 5. The appointment of bishops and civil governments: reiterating the words of *Christus Dominus* number 20, canon 377 § 5 stipulates that no rights or privileges of election, appointment, presentation or designation of bishops are conceded to the civil authorities. At present the system in vogue in a good number of concordats and conventions

¹⁵⁷ Cf. Normae de promovendis ad Episcopale ministerium in Ecclesia Latina, Art. 13, n. 3, AAS 64 (1972) 391.

¹⁵⁸ Cf. M. COSTALUNGA, "Procedure con i governi e privilegi in materia di nomine vescovili", in *La curia Romana nella Cost. Ap. "Pastor Bonus"*, Città del Vaticano 1990, 293-301.

^{159 &}quot;Indices autem non minuunt libertatem Romani Pontificis, cui pro suo munere semper integrum est eligere et instituere etiam viros aliunde sumptos. Normae de promovendis ad Episcopale ministerium in Ecclesia Latina, Art. XI, n. 2. AAS 64 (1972) 390.

regarding the nomination of bishops is that of unofficial communication. The name of the designated person is communicated to the government, which can refer to the Apostolic See if there are objections of a political nature to the person. 160

We have analyzed the procedure for the appointment of bishops in the Latin Church in order to elucidate the role of the bishops' conference in the procedure. The canon 377 § 1 does not reject the possibility of election of bishops, subject to confirmation by the Roman Pontiff; yet until today there is no provision for an episcopal conference to enjoy such a right of election. The list of worthy candidates for the episcopate is normally prepared by the assembly of bishops of the province under the presidency of the metropolitan, and only "if special circumstances suggest it" (ubi adiuncta id suadeant) the bishops' conference is permitted to do the same. Not only does the bishops' conference have no electoral powers, but it cannot even participate in the procedure for the appointment of bishops, in normal cases.

Conclusion

The decadence of particular councils in the West necessitated an organ of coordination and consultation on the national level which enables the bishops of the same sociocultural and political context to affront their particular problems and to formulate appropriate norms for common pastoral action. As a response to this inevitable exigency, bishops' conferences spontaneously emerged in different parts of the world. Though an implicit statement about bishops' conference appeared in the CIC 1917, and some popes encouraged such conferences providing them directive principles and guidelines, it is only with the promulgation of

¹⁶⁰ Cf. COSTALUNA, "Procedure con i governi e privilegi in materia di nomine vescovili", 293-307; Code of Canon Law Annotated, 300.

P. KRÄMER, "Episcopal Conferences and the Apostolic See", 141; P. COLELLA, "Considerations on the Nomination of Bishops in Current Canon Law", Concilium 4 (1990) 98-102.

the Decree of the Pastoral Office of the Bishops in the Church, *Christus Dominus* on 28 October 1965, that the conference became part of the universal law of the Church. After the Council, already existing bishops' conferences revised their statutes with the approval of the Holy See according to the basic principles established by *Christus Dominus*, and new conferences sprang up in those countries where they had not existed. CIC 1983 canonized the conciliar regulations and further specified the competence of the conference.

According to Vatican II and the Code of Canon Law, bishops' conferences are primarily organs of consultation and coordination of pastoral action on the national level. However, they enjoy legislative power in well-defined instances. We have indicated all the instances on which the bishops' conference can promulgate general decrees (46 in number), and single administrative acts (30 cases). Moreover, the conference has participation right in the decision-making process of the Apostolic See or diocesan bishops at least 13 instances. The conference has practically no electoral and judicial powers.

In spite of the above-indicated limitations, at present the bishops' conference: 1) enables the coordination, collaboration and concord of the bishops of a nation and fosters communion among them; 2) helps the formulation of common pastoral action for the whole nation; 3) facilitates the evolution of a common policy to affront socio-political problems; 4) furthers the translation, adaptation and inculturation of the liturgy and the law of the Church to the socio-cultural conditions of each nation; and 5) promotes the evangelization and re-Christianization of each country, taking into account its own particular problems and prospects. Hence, at present the conference seems to be the real conciliar or synodal institution of the Latin Church, analogous to the synods of the Eastern Churches.

Chapter Nine

COMPARISON OF THE TWO EPISCOPAL BODIES OF THE LATIN CHURCH

According to the Code of Canon Law, particular councils and bishops' conferences are the two kinds of local episcopal bodies of the Latin Church which foster collaboration and cooperation among the bishops of a local Church for the common good. In chapter seven entitled, "Particular Councils and Their Legislative Power", we evaluated the evolution of particular councils according to the doctrine of the ecumenical councils of the second millennium and then outlined the different aspects of particular councils according to CIC 1983 in comparison with CIC 1917. The eighth chapter dedicated to bishops' conferences highlighted the origin and development of bishops' conferences and then presented in a comprehensive manner the nature and content of their legislative power. We also examined whether the bishops' conference has any judicial or electoral powers. In this chapter we compare the two local episcopal bodies of the Latin Church, namely particular councils and bishops' conferences with special reference to their legislative power.

1. Origin and Development

Councils and synods are of ancient origin, while the bishops' conference is a new institution which is still under evolution and maturation. As the decree on the pastoral office of bishops in the Church *Christus Dominus* clearly states, from the earliest centuries of the Church bishops in authority over particular Churches inspired by fraternal charity and urged by zeal for the mission to all people, acted in a collegial manner; and for this purpose "synods, provincial councils and finally plenary councils were established" (CD 36).

The Apostolic Council of Jerusalem in which the Apostles and the elders settled the question of circumcision and the applicability of the Jewish law to the gentile Christians,

¹ See chapter 1, heading n. 1 & chapter 8, heading n. 1.

is generally considered as the archetype and model of all synods and councils.² Taking impulse from the Council of Jerusalem, bishops, the successors of the Apostles, acted in a collegial manner in affronting important canonical, doctrinal and administrative problems of each local Church having a homogenous socio-cultural background as well as political circumscription, and thus provincial synods, patriarchal synods and other regional councils originated.

The ecumenical councils of the early Church recognized and confirmed the emerging collegial episcopal bodies and promulgated laws regarding their functioning. membership. competence, etc.3 The ecumenical councils of the second millennium also did not refrain from underscoring the importance of particular councils in the life of the Church. In fidelity to the common tradition of the Church, collegial episcopal bodies like provincial and patriarchal synods always endured in the East and are still playing an important role in the government of the Church. As far as the Western Church is concerned, there is a gradual decadence of synods and councils as a result of the development of the monarchic ecclesiology which effectuated a high concentration of power in the central organ and obfuscated the collegial dimension of episcopacy. So a new institution which fosters communion and concord among the bishops and coordinates common pastoral action became absolutely necessary. Bishops' conferences spontaneously emerged in different parts of the world to provide for this inevitable exigency.

The first informal meetings of bishops which paved the way for the bishops' conferences in the present form appeared only in the first half of the nineteenth century. CIC 1917 made only an indirect reference to bishops' conferences (c. 292). It is only with the promulgation of *Christus Dominus* on 28 October 1966 that the bishops' conference received the

² See chapter 1, heading n. 1.1.

³ See the First Council of Nicaea, cc. 4-6; the First Council of Constantinople, c. 2, the Council of Chalcedon, cc. 9, 17, 28; the Second Council of Nicaea II, cc. 3, 6.

⁴ See chapter 7, heading n. 1.

official status of an ecclesiastical institution (CD 36). CIC 1983 further regulated the functioning of bishops' conferences (cc. 447-459). In fact the Final Report of the 1985 extraordinary Synod of Bishops states: "Since the episcopal conferences are so useful, indeed necessary in the presentday pastoral work of the Church, it is hoped that the study of their theological "status" and above all the problem of their doctrinal authority might be made explicit in a deeper and more extensive way keeping in mind what is written in the conciliar decree Christus Dominus (n. 38) and in the Code of Canon Law (cc. 447 and 753).5 Afterwards, on 1 July 1987. the Congregation for Bishops circulated to bishops a draft statement on the theologico-juridical status of bishops' conferences for furthering study and discussion. The final result of this study has not yet been published by the Congregation. 6 In short, the bishops' conference is a new institution whose theologico-juridical ramifications and multifarious competencies are still under investigation.

2. Institution and Juridical Personality

The bishops' conference is a permanent institution (c. 477) which enjoys a juridical personality by virtue of the law itself (c. 449 § 2) and which functions according to the general norms concerning juridical persons (cc. 113-123) and according to its own statutes promulgated by the bishops with the approval of the Holy See (c. 451). On the other hand, particular councils - provincial or plenary - are not instituted in a permanent way, and thus they have no juridical personality nor statutes approved by the supreme authority of the Church. A particular council exists only when the bishops assemble together for its celebration, that is, from the opening day of a council till its dissolution. Though according to the common law, the general assembly takes place only once a year, the bishops' conference is a permanent institution since it has stable organs like the president, vice-

⁵ Final Report, II, C, n. 8b, L'Osservatore Romano, 10 Dicember 1985.

⁶ THE CONGREGATION FOR BISHOPS, "Status teologico e giuridico delle conferenze episcopali", (Instrumentum laboris), *Enchiridion Vaticanum* 10, 1286-1305.

president, general secretary, permanent council and various other commissions and offices which conduct the day-to-day business of the conference.⁷

According to the present law, the plenary council completely depends upon the bishops' conference, just as the provincial council depends on the metropolitan together with the suffragan bishops, for their existence and functioning. According to canon 439, "A plenary council for all the particular Churches of the same bishops' conference is to be celebrated as often as the bishops' conference, with the approval of the Apostolic See, considers it necessary or advantageous". Similarly a provincial council, for the various particular Churches of the same ecclesiastical province, is celebrated as often as, in the judgement of the majority of the diocesan bishops of the province, it is considered opportune (c. 440 § 1). Therefore, according to the present law, particular councils do not really exist, because they can come into being. only if the bishops' conference (plenary council) or the bishops of a province (provincial council) decides for their celebration. Since no time period is specified for the celebration of particular councils, the bishops' conference or the bishops of a province have no obligation to convene them. Thus in most of the countries, particular councils have never occured after Vatican II or the promulgation of the new Code and so remain only a mere possibility.

A plenary council completely depends upon the bishops' conference also for its functioning because it is the bishops' conference that convenes a plenary council; elects from among the diocesan bishops a president; determines the agenda; and decides the dates of the opening and closing of the council (c. 441). With regard to the provincial council the metropolitan with the consent of the suffragan bishops exercises the powers enjoyed by the bishops' conference (c. 442). Therefore, according to the present law, the plenary council appears to be a subsidiary organ of the bishops' conference. It completely depends upon the conference for both its existence and functioning, though once convoked, it becomes more powerful than the conference itself.

⁷ See chapter 8, heading n. 2.1.1.

Though a plenary council depends upon the bishops' conference for its existence and functioning, as we already indicated, it seems that a conference cannot abrogate, derogate or modify the norms established by the plenary council for its territory because of the following reasons:

- 1. The ambit of the legislative power of the conference is less than that of particular councils, and it cannot include the matters treated in the council, since the competence of the conference is well delineated in canon 455 § 1. In other words, the competence of the bishops' conference is specifically and materially restricted and may not include the questions that were considered in the council.
- 2. The decisions of the plenary council have already received *recognitio* of the Holy See; this is an *apposito manus* of the Apostolic See which the conference has to take into account.
- 3. The plenary council is the assembly of those particular Churches belonging to the same bishops' conference (c. 439 § 1). But the bishops who by law itself participate in the plenary council are more numerous than those who by law participate in the episcopal conference with the same deliberative vote (cc. 443 §§ 1-2; 454). Therefore, it would be a contradiction in terms that a small number of bishops abrogate or modify what was approved and promulgated by a greater number of bishops.⁸

3. Membership and Participation

The bishops' conference, as the title itself indicates, is a body of bishops and those equivalent to them in law; therefore, priests, religious or laity cannot be its members (c. 449). Even titular bishops who do not exercise in the territory of the conference a special office assigned to them by the Apostolic See, or by the conference itself, are not members of the conference.

On the contrary, a particular council, in which the representatives of all sections of the Christian faithful

⁸ Cf. L. CHIAPPETTA, Il codice di diritto canonico, vol.1, 533.

participate, is a great manifestation of the communion of a local Church. In addition to bishops and those equivalent to them in law vicars general and episcopal vicars of all the particular Churches within the territory, the major superiors of religious institutes and societies of apostolic life elected according to the number determined by the conference, rectors of ecclesiastical and Catholic universities, some rectors of major seminaries, deans of the faculties of theology and canon law are all de iure members and must be convened to the council (although they have only a consultative vote). Moreover, priests and others of Christ's faithful can be called to particular councils. but they also have only a consultative vote. Furthermore, Catholic Orientals or even non-Catholics can be invited as guests but without any kind of vote. In short the bishops' conference is an episcopal body and its episcopal character is in principle preserved: while a particular council is an assembly of the whole people of God including representatives of priests, religious and laity, even though only the bishops enjoy a deliberative vote.

4. Purpose of the Two Institutions

According to the common tradition of the Church. synods and councils are legislative bodies which from the very inception of the Church enacted and promulgated doctrinal and legislative decrees for the regulation of Christian life in the provincial, regional or patriarchal as well as universal Church level. As the document of the World Council of Churches. The Importance of the Conciliar Process in the Ancient Church for the Ecumenical Movement, rightly underscores, "The councils of the early Church issued doctrinal decrees and determined Canon Law. As a rule they came together to protect the truth against error or internal danger. They fulfilled a task in a particular historical moment. They taught a necessarium, but did not present a compendium of theological truths. They emphasized fundamental truths. given in the tradition of the Church".9 Thus, from the very beginning, the main purpose of councils whether ecumenical

⁹ WCC, Councils and the Ecumenical Movement, 14.

or particular has been the promulgation of laws and doctrinal decrees.

On the other hand, the bishops' conference is primarily a consultative body for fostering communion and collaboration among the bishops and for coordinating apostolic ministry and pastoral action. For many years bishops' conferences did not enjoy any legislative power, even though the bishops could have bound themselves by mutual consent and by promulgating the decisions of the conference as diocesan laws. During the iter of the Latin Code, the code commission made it clear that the bishops' conference is not primarily a legislative body directed towards the centralization of ecclesiastical governance, but "an organ of union and communication of bishops among themselves, so that in the governance of their own dioceses each one can proceed with the insights of prudence and experience in the light of common consultation (CD 37), and therefore in the same conciliar decree it was established that the decisions of conferences would have obligatory force only in expressly defined cases (CD 38)".10 Therefore according to the present law, though the conference exercises legislative power in those welldetermined matters under rigorous conditions, it remains primarily and essentially an organ of coordination and common pastoral action.11

In the words of the commission, "Hoc factum est post consultationem, quia permulti id petierunt, quo magis extollatur auctoritas et potestas Episcopi dioecesani in propria Ecclesia particulari. Et merito quidem, quia Conferentia Episcoporum non intelligitur primarie ut coetus legislativus qui fere omnia centralizare debeat, sed est praesertim organum unionis et communicationis Episcoporum inter se, ita ut in regimine propriae dioecesis, unusquisque procedere valeat <communicatis prudentiae et experientiae luminibus collatisque consiliis> (Decr. Christus Dominus, n. 37), et propterea in eodem Decreto conciliari statuitur decisiones Conferentiae vim iudice obligandi habere dumtaxat in casibus expresse definitis". Communicationes 14 (1982) 199.

¹¹ See chapter 8, heading n. 5.

5. Legislative Competence

Particular councils have general competence, while the competence of the bishops' conference is well defined and delimited in the Code itself. Particular councils, whether provincial or plenary, enjoy ample "power of governance especially legislative power" in a general way in its own territory. The power of governance (munus regendi) is distinguished as legislative, executive and judicial. 12 Therefore, particular councils can make legislative, judicial and administrative decisions. They can legislate whatever is necessary for the pastoral needs of the Christian faithful, for the preservation and increase of authentic faith and morals and for the promotion of common ecclesiastical discipline in the region. The legislative and doctrinal competence of particular councils is limited only by the universal law and authentic magisterium of the supreme authority of the Church.

The bishops' conference, on the other hand, can make laws only in cases where the universal law so prescribes, or by a special mandate of the Apostolic See, either on its own initiative or at the request of the conference itself (c. 455 § 1). According to universal law, the bishops' conference can issue general decrees only in forty-six instances clearly determined in the Code. Moreover, it can make single administrative decisions (which are not laws) at least in thirty cases. 13 In addition to the limited instances stated in CIC, the conference can promulgate laws only if it receives a special mandate from the Holy See for particular cases, issued on its own initiative or requested by the conference itself. Therefore, if the conference has to issue a general decree on a problem confronting the Church in a particular nation, it should first of all request the mandate from the Holy See, issuing the decree only when the mandate has arrived.

[&]quot;Potestas regiminis distinguitur in legislativam, exsecutivam et iudicialem". Canon 135 § 1.

¹³ See chapter 8, heading n. 6.

5.1. The Required Majority

In the section dedicated to the particular councils (cc. 439-445) nothing is said about the type of majority necessary for the promulgation of laws. In particular councils decisions are made according to the general norms for collegial action. Therefore in particular councils, provided a majority of those who must be summoned are present, what is decided by an absolute majority of those present has the force of law (c. 119). Accordingly in a particular council with fifty members, if twenty-six are present (50% + 1) the necessary quorum is fulfilled and juridically binding decisions can be enacted if an absolute majority of the members present vote (50% + 1) in favour of a proposal. Hence, theoretically a minority can make decisions which bind all the bishops and other Christian faithful within its territory.

On the other hand, a bishops' conference can issue a juridically binding general decree only if it receives at least two thirds of the votes of the those who belong to the conference with a deliberative vote, whether present or absent (455 § 2). Thus the votes of absent-members are automatically counted with those who vote against a proposal. For example, if there are sixty members in a conference, a general decree can be made only if forty members vote in favour of it. In the case where only fifty members are present (10 absent), a general decree cannot be enacted if eleven members vote against it, because the absent members plus those who vote against number twenty-one, and so the proposal has not obtained the two-thirds majority. The other non-binding decisions of the conference can be made just like in a particular council on the basis of absolute majority vote.

5.2. Binding Force of the Decisions

The decisions of a particular council, promulgated after the required review by the Holy See, bind all the bishops and other Christian faithful within the territory of the council.¹⁴ On the contrary, the decisions of the conference, except in

¹⁴ See c. 446 & chapter 7, heading n. 6.7.

those cases explicitly stated in the Code or mandated by the Holy See and enacted according to the two-thirds majority of those with a deliberative vote, have no juridical binding force, though it is highly desirable that all bishops and the Christian faithful respect such decisions in a spirit of fraternal charity and ecclesial communion. ¹⁵

6. Bishops' Conference and Particular Councils in Relation to the Holy See and Individual Bishops

The two poles of the hierarchical structure of the Church are the primatial office of the Roman Pontiff and the ministry of the diocesan bishops. According to Catholic theology, the Roman Pontiff as the head of the college of bishops, the vicar of Christ and the pastor of the universal Church has supreme, full, immediate and universal ordinary power in the Church, and he can always freely exercise this power (c. 331; LG 22). Moreover, by virtue of his office, the Roman Pontiff not only has power over the universal Church, but also has pre-eminent ordinary power over all particular Churches and their groupings (c. 333 § 1). The college of bishops, in union with its head and never without its head, is also the subject of supreme and full power over the universal Church (c. 333 § 1).

By divine institution, bishops succeed the Apostles through the Holy Spirit who is given to them (c. 375 § 1). By their episcopal consecration, bishops receive the offices of sanctifying, teaching and ruling which can be exercised only in hierarchical communion with the head of the College and its members (c. 375 § 2; LG 21). In the diocese entrusted to his care, the diocesan bishop who is the "visible source and foundation of unity" has all the ordinary, proper and immediate power required for the exercise of his pastoral office, except in those matters which the law, or a decree of the Supreme Pontiff reserves to the supreme or to some other ecclesiastical authority (LG 23 & 27; c. 381). Hence according to the divine constitution itself, the office of the Roman Pontiff and the ministry of the diocesan bishops are the two

¹⁵ See c. 455 & chapter 8, heading n. 5.7.

poles of the hierarchical structure of the Church. Any intermediary instance should respect the powers and authority of the Roman Pontiff and of the diocesan bishops which belong to ius $\operatorname{divin} um.^{16}$

6.1 Relationship with the Holy See

A plenary council, including a provincial council whose boundaries coincide with the boundaries of the country cannot be celebrated without the approval of the Holy See (c. 439). If a bishops' conference would like to celebrate a plenary council, it should ask permission from the Holy See. It cannot proceed until the permission has arrived. Therefore, ultimately, the decision depends upon the Holy See and not on the bishops' conference (c. 439 § 1). Similarly the president of a plenary council elected from among the diocesan bishops should be approved by the Holy See (c. 441, n. 3). In other words, since plenary councils are not instituted by the supreme authority of the Church in a permanent manner, the approval of the Holy See is an imperative whenever the bishops decide to celebrate them.

According to the Code of Canon Law, the supreme authority of the Church alone has the authority to establish, suppress or alter a bishops' conference (c. 449). Similarly it pertains to the Apostolic See to review the statutes drawn up by each bishops' conference (c. 451). Since a bishops' conference depends upon the Holy See for its very existence and since it operates according to the statutes already reviewed by the Holy See and its competence is well-defined in the Code itself approved and promulgated by the supreme authority of the Church, no further authorization is necessary for its regular functioning.

After the conclusion of a particular council, all the acts and decrees are to be sent to the Holy See. The decrees can be promulgated only after having received the official

¹⁶ Cf. J. L. GUTIÉRREZ, "El obispo diocesano y la Conferencia epiacopal", Ius Canonicum XXI, 42 (1981) 509-515; "L'attività normativa delle conferenze episcopali", in Ius in vita et missione Ecclesiae, (a cura di Pontificium Consilium de Legum Textibus Interpretandis), Città del Vaticano 1994, 605-624.

notification of the review and approval of the Holy See (c. 446). When a plenary meeting of the conference has been concluded, its minutes are to be sent to the Holy See for information, and its decrees, if any, for review (c. 456). The minutes of the plenary meeting keep the Holy See informed of what is taking place within the conference and permit a thorough examination of the decrees submitted for review.

All the decrees of a particular council whether legislative, doctrinal or administrative are to be reviewed by the Holy See before promulgation. On the contrary, only those legislative general decrees of the conference which are made according to the conditions stipulated in canon 455, that is, those decrees which obtain the two thirds majority of the members of the conference concerning those well-defined matters determined in the Code are to be reviewed by the Holy See before promulgation. No review is needed for other eventual legislative, doctrinal or administrative decrees of the conference. All decrees of a particular council, reviewed by the Holy See, after their promulgation juridically bind all the Christian faithful - bishops, clergy, religious and laity - within in its territory. But only those decrees of the conference made according to the prescriptions of canon 455 juridically bind.

6.2. Relationship with Individual Diocesan Bishops

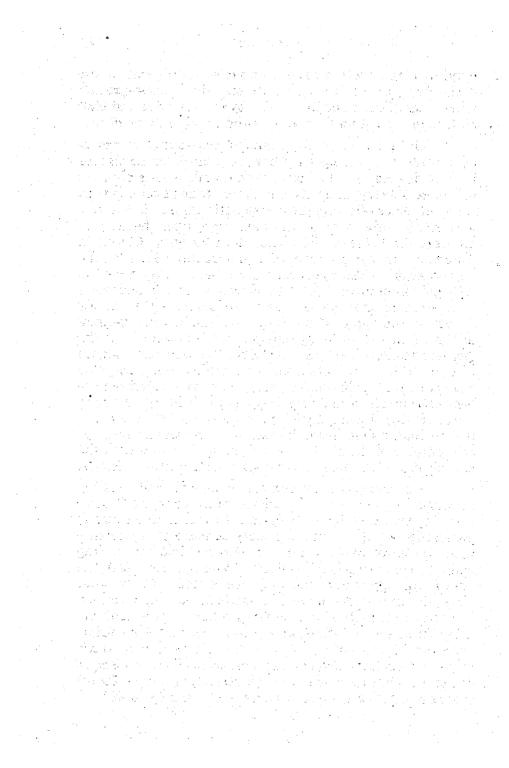
As we have already accentuated, a diocesan bishop has all the powers necessary for the exercise of his pastoral ministry in a diocese, but this does not exclude the collaboration and cooperation of bishops in local episcopal bodies like particular councils and bishops' conferences. The very nature of episcopal collegiality and the ecclesiology of communion necessitate the communal activity of the bishops for the common good of the local Church. We evaluate here how such collegial activity is possible in particular councils and bishops' conferences without endangering the episcopal power within the dioceses.

The liberty and autonomy of the diocesan bishops are not safeguarded in the same way in bishops' conferences and particular councils. Particular council has general competence to decide whatever is good for its territory while the competence of the conference is clearly delimited. Provided a

majority of those who must be summoned are present, all the decisions approved by an absolute majority of those present obtain legal force after the review by the Holy See and bind all bishops and other Christian faithful within its territory.

The purpose of the bishops' conference is not to expropriate the functions and powers of the diocesan bishops in their dioceses, but to enable them to fulfill their ministry in a more effective and fitting manner. It deals mainly with common issues affecting the entire Latin Church in a nation or territory, without intruding or infringing upon the internal affairs of the diocese which do not affect the entire Church in. a nation. In comparison with particular councils, the autonomy of the diocesan bishops are better safeguarded in bishops' conferences. Only the diocesan bishops and those equivalent to them in law have deliberative vote in the formation and approval of the statutes and in their eventual modification. In order to safeguard the autonomy of the diocesan bishops, the Code prescribes that only the diocesan bishops (those equivalent to them in law and coadjutor bishops) have a deliberative vote in plenary meetings of the bishops' conference, and only they enjoy a deliberative vote in the approving or changing of the statutes (c. 454). Therefore, the diocesan bishops have the exclusive competence to shape the contents of the statutes which decide the nature of the participation of the auxiliary bishops and other titular bishops.

The bishops' conference can make juridically binding decisions only in those cases clearly indicated in the Code or explicitly mandated by the Holy See. Furthermore, only those general decrees approved at a plenary session of the conference with two thirds of the votes of conference members having deliberative vote have juridically binding force, after the review and approval of the Holy See (c. 455 § 4). In other cases, the competence of the diocesan bishops remains intact. In such cases, neither the conference nor its president can act in the name of all the bishops unless each and every bishop has given his consent (c. 455 § 4). The diocesan bishops can dispense from laws made by particular councils or by bishops' conferences in the same manner, whenever he judges that it contributes to the spiritual welfare of the faithful (c. 88).



Part Three

ENCOUNTER BETWEEN EAST AND WEST

Chapter Ten

THE SYNOD OF BISHOPS OF THE EASTERN CHURCHES AND THE BISHOPS' CONFERENCE OF THE LATIN CHURCH

We analyzed in part one the local episcopal bodies of the Eastern Catholic Churches and in part two those of the Latin Church. In this chapter we compare the most traditional and most ideal episcopal body of the Eastern Catholic Churches, namely the synod of bishops, with the bishops' conference, the parallel institution of the Latin Church.

We do not consider the plenary councils of the Latin Church as the parallel institution of the synod of bishops of the Eastern Churches because plenary councils, which depend upon the bishops' conference both for their existence and functioning are not instituted in a permanent manner; and thus they have no juridical personality, nor statutes approved by the supreme authority of the Church, nor permanent organizational structures. Without establishing a fixed tenure for their celebration the Code subjugated them to the decision of the bishops' conference of each place, and thus their celebration remains a mere possibility. On the other hand, the bishops' conference is a permanent institution (c. 477) which enjoys a juridical personality by virtue of the law itself (c. 449) § 2) and which functions according to the general norms concerning juridical persons (cc. 113-123) and according to its own statutes promulgated by the bishops with the approval of the Holy See (c. 451). Though according to the common law the general assembly takes place only once a year, the bishops' conference is a permanent institution since it has stable organs like the president, vice-president, general secretariat. permanent council and various other commissions and offices which conduct the day-to-day business of the conference.1 Therefore at present the bishops' conference is the synodal institution of the Latin Church analogous to the synod of bishops of the Eastern Churches.

¹ See chapter 8, heading n. 2.1.1.

The Second Vatican Council, after speaking about the ancient patriarchal Churches which, whilst safeguarding the unity of the faith and the unique divine structure of the universal Church, have their own liturgical, theological, spiritual and disciplinary patrimony, declared: "In a like fashion the episcopal conferences at the present time are in a position to contribute in many and fruitful ways to the concrete realization of the collegiate spirit". Similarly, many other Vatican documents consider both synods and episcopal conferences as parallel institutions. On the basis of these affirmations, ecclesiologists of the Latin Church try to compare the synod of bishops of Eastern Churches with the bishops' conference of the Latin Church. About this particular point K. Mörsdorf writes:

Now the episcopal conference is in the first place meant to be a synodal institution of the Latin Church, though this does not exclude such conferences from the sphere of the Oriental Churches. While in the constitution of the Eastern Churches the collegial element has always been active in their synods, it had been moribund in the West and made a new start only in the episcopal conferences. These have now developed into a hierarchical institution and thus been given the chance for extensive legal activity. The frequent equation between patriarchal synods and episcopal conferences in post-conciliar legislation points to the same tendency.⁴

On the other hand, referring to the synodality of the Eastern Churches, J. Ratzinger accentuates that "While a number of

² Lumen gentium 23; cf. Catechism of the Catholic Church, n. 887.

³ "Ecclesiae sanctae" I, nn. 2, 5, 8 & 43; "Communio et progressio" AAS 63 (1971) 594, n. 4; "Mutuae relationes", AAS 70 (1978) 503-504, nos. 60, 62 & 63.

⁴ K. MÖRSDORF, "Decree on the Bishops' Pastoral Office in the Church", 288-289; Cf. also K. MÖRSDORF, "Das synodale Element in der Kirchenferfassung", 584; B. P., PRUSAK, The Canonical Concept of Particular Church before and after Vatican II, Rome 1967, 110; J. H. PROVOST, "Structuring the Church as a Communio", The Jurist 36 (1976) 237; Inter ecclesial communion in the Light of the Second Vatican Council, Rome 1967, 114; K. RAHNER, "Episcopal Office", TI, vol. 6, 1961, 355-356; "Conferenze episcopali", 609-610.

parallels may be drawn with similar institutions in the Latin Church, the synod of bishops of patriarchal and major archiepiscopal Churches has no precise equivalent in the Latin Church, for its structure reflects a form of collegial governance preserved in a unique way by the Churches of the East". In this chapter we try to spotlight the important aspects of convergence and divergence between the synod of bishops and the bishops' conference.

1. Synod as an Ecclesial Reality - Bishops' Conference as Hierarchical Cooperation

According to the Eastern Catholic ecclesiology, recognized by Vatican II, the Catholic Church is a communion of different Churches sui iuris, each having its own liturgical, theological, spiritual and disciplinary heritage and ecclesial identity. An accurate scrutiny of the three documents of Vatican II, Lumen Gentium, Orientalium Ecclesiarum and Unitatis Redintegratio which determine the nature, structure and constitution of the Church, demonstrates the recognition of intermediary ecclesial communions like patriarchates and their equivalents, especially in relation to Oriental Churches. According to Lumen Gentium article 23:

By divine providence it has come about that various churches, founded in various places by the apostles and by their successors, have in the course of time become joined together into several groups, organically united, which, while maintaining the unity of faith and the unique divine constitution of the universal church, enjoy their own discipline, their own liturgical usage and their own theological and spiritual patrimony. Among these there are some, especially the ancient patriarchal churches, like matrices of the faith, which have given birth to others as daughters; and right down to our own times they are more closely bound to these churches by the bond of charity in sacramental life and in mutual respect for rights and duties. This variety of local churches, in harmony among themselves.

⁵ L'Osservatore Romano, venerdì 12 gennaio 1996, p.4.

demonstrates with greater clarity the catholicity of the undivided church [...].

It is evident that the organically united groups of Churches with their own liturgical, theological, spiritual and disciplinary patrimony, of which the Council speaks, are not eparchies but intermediary communions like the ancient patriarchal Churches. The Council also accepts that these institutions have been developed according to divine providence.

The existence of intermediate communions is more evident in *Orientalium Ecclesiarum*. According to OE, "The holy Catholic Church, which is the mystical body of Christ, is made up of the faithful who are organically united in the Holy Spirit by the same faith, the same sacraments and the same government. They combine into different groups, which are held together by their hierarchy and so form particular Churches or rites" (OE 2).

As is clear from the third article, "particular Church" is a common term applicable to both Latin and Oriental Churches. "These particular Churches both Eastern and Western while they differ somewhat among themselves in what is called "rite", namely in liturgy, in ecclesiastical discipline, and in spiritual tradition, are none the less all equally entrusted to the pastoral guidance of the Roman Pontiff" (OE 3).

Unitatis Redintegratio recognizes the non-Catholic Oriental Churches as particular Churches and considers them as intermediate ecclesial communions: "The Council gladly reminds everyone of the highly significant fact among others: in the East there flourish many particular local Churches; among them the patriarchal Churches hold first place, and of them many glory in taking their origins from the apostles themselves" (UR 14). The Eastern Orthodox Churches, "though separated from the See of Peter, remain united to the Catholic Church by means of very close bonds, such as the apostolic succession and a valid Eucharist, and therefore merit the title of particular Churches".6

⁶ Litterae ad Catholicae Ecclesiae episcopos de aliquibus aspectibus Ecclesiae prout es communio, n. 17, AAS 85 (1993) 848.

In accordance with the doctrine of Vatican II the Eastern Catholic ecclesiology advocates a three-tier structure of the Catholic Church: eparchial Church (ecclesia particularis) headed by the eparchial bishop, individual Church (Ecclesia sui iuris) headed by the patriarch or an equivalent hierarchical head, and the universal Church (Ecclesia universalis), headed by the Bishop of Rome. Accordingly the universal Church is a communion of Ecclesiae sui iuris like the Eastern patriarchal Churches, major archiepiscopal Churches, metropolitan Churches and the Latin Church (a patriarchal Church sui generis). The synod of bishops together with the patriarch or major archbishop is the highest legislative, judicial and electoral authority of the same Church, and it acts as an intermediary authority between the diocesan bishops and the supreme authority of the Church.

On the contrary, the Western ecclesiology admits only a two-tier structure of the Church, dioceses (Ecclesiae particulares) and the universal Church (Ecclesia universalis). • to the exclusion of any intermediary Church (equivalent to the Eastern Churches sui iuris within the Latin Church) between the diocesan Churches headed by bishops and the universal Church headed by the Roman Pontiff. Therefore the groupings of particular Churches like the bishops' conferences do not enjoy the status of Churches, but remain only organs of unitv. coordination and collaboration of bishops who are exercising their ministry in the same nation or territory, without being an ecclesial reality. The draft statement of the Congregation for Bishops regarding the theologico-juridical status of the bishops' conference considers the "The emerging of ecclesiastical instances which would claim an undue autonomy from the Apostolic See and would therefore end up by setting themselves against it and its doctrinal and disciplinary directives" as a danger that should be avoided.7

Alluding to LG 23 which treats the Eastern patriarchal Churches, some try to attribute intermediary status to the bishops' conference. For example, speaking about the episcopal

⁷ THE CONGREGATION FOR BISHOPS, "Status teologico e giuridico delle conferenze episcopali", (Instrumentum laboris), Enchiridion Vaticanum 10, 1298.

conferences, J. H. Provost points out that the characteristics of a particular Church of the East are now discernible to a certain extent also in the West: "Discipline is being adapted even to the extent of juridical procedures. Liturgical usage is now modified to the language and customs of the people. Certain theological and spiritual insights characteristic of various cultures can now be discerned. In short, those elements which characterize a particular Church are now discernible in the ambiance of episcopal conferences". Similarly in his commentary on LG 23, referring to the expression "By divine providence it has come about that various churches[...]", Karl Rahner writes:

It is to be noted that though only formulated as a historical observation, the first sentence of the section involves an important principle, since the historical findings are regarded as marking a special divine providence. It affects particularly the Latin or Western branch of the Catholic Church because this has in fact been practically identified with the Church as a whole. Major Churches with their own discipline, their own liturgy and their own spiritual and theological heritage could also be formed in the future, by "divine providence", say in Africa, Asia or South America.9

Such deductions from a single passage of the Vatican II remains until today a mere rhetorical exaggeration without any concrete realization. It is to be particularly noted that the council which calls the Eastern Churches "particular Churches" (LG 13; OE 2, 3, 4, 16, 17, 19; UR 14; AG 22) or "local Churches" (LG 23; UR 14) never attributes these tittles to the bishops' conference. According to the official position, "the bishops' conference is not primarily an organ directed towards the centralization of ecclesiastical governance at the intermediate level; it is, instead, an organ of union and communication of bishops among themselves, so that in the governance of their own dioceses each one can proceed with the insights of prudence

⁸ J. H. PROVOST, "Structuring the Church as a Communio", 237.

⁹ K. RAHNER, "The Hierarchical Structure of the Church, with Special Reference to Episcopate", in H. Vorgrimler, ed., Commentary on the Documents of Vatican II, vol. 1, New York 1967, 207.

and experience in the light of common consultation (CD 37), and therefore the decisions of Conferences would have obligatory force only in expressly defined cases". 10

The bishops' conference cannot be considered primarily as a coetus ecclesiarum in the sense of an intermediary structure between the diocesan bishops and the supreme authority of the Church, but only as a coetus episcoporum for fostering collaboration and communion among the bishops of a nation or territory to coordinate pastoral action. The Latin Church (the Western Patriarchate), though with socio-cultural adaptations and a legitimate pluralism of liturgico-theological expressions, remains one and the same Church all over the world under the patriarch of the West, the pope. Hence the bishops' conference or any other episcopal convocation remains an organ of cooperation of bishops and cannot reach the level of an intermediary ecclesial structure between the diocesan bishops and the supreme authority of the Church.

From the Eastern perspective the Western Church is one among the Churches *sui iuris* having its own liturgical theological, spiritual and disciplinary heritage; and therefore, the episcopal body equivalent to the Eastern synod would be a synod or conference, convened and presided over by the pope, the patriarch of the West in which all the bishops of the Latin Church (the Western patriarchate) participate at least in a representative manner. All other episcopal bodies would remain at the level of the cooperation of local bishops without being an ecclesial reality. This is also evident from the fact that

Regarding the limited legislative power of the bishops' Conference the Pontifical Commission observes: "Hoc factum est post consultationem, quia permulti id petierunt, quo magis extollatur auctoritas et potestas Episcopi dioecesani in propria Ecclesia particulari. Et merito quidem, quia Conferentia Episcoporum non intelligitur primarie ut coetus legislativus qui fere omnia centralizare debeat, sed est praesertim organum unionis et communicationis Episcoporum inter se, ita ut in regimine propriae dioecesis, unusquisque procedere valeat <communicatis prudentiae et experientiae luminibus collatisque consiliis> (Decr. Christus Dominus, n. 37), et propterea in eodem Decreto conciliari statuitur decisiones Conferentiae vim iudice obligandi habere dumtaxat in casibus expresse definitis". Communicationes 14 (1982) 199.

¹¹ Cf. G. GHIRLANDA, "Concili particolari e conferenze dei vescovi", 121.

membership in the synod of bishops of an Eastern Church is determined on the <u>basis of Church</u> sui iuris, while the membership in the conference is determined normally on <u>national or territorial basis</u>. In other words, <u>all bishops of the same Church</u> participate in the synod wherever they are constituted, while <u>bishops of the same nation</u> participate in the conference, not all bishops of the Latin Church.

The synod is also an ecclesial reality from another perspective. According to genuine Eastern tradition, bishops participate in the synod not as private individuals but as heads of Christian communities representing them. Only eparchial bishops who are really heads of Christian communities enjoy a deliberative vote in the synod. Titular bishops, especially retired bishops who do not head a Christian community cannot enjoy a deliberative vote. Therefore, the synod is not. simply a meeting of bishops but the meeting of Churches through their bishops. Each eparchial Church is fully Church having all the characteristics of the Church: catholicity. apostolicity, holiness and unity, and not merely parts of the universal Church. When eparchial bishops, the heads of eparchial Churches, assemble together in a synod it really becomes an encounter of Churches and their faith. Therefore the synod is not simply a communion of bishops, but a communion of Churches and their faith

2. The Origin and Development

The synod of bishops is of ancient origin, while the bishops' conference is a new institution which is still under evolution and maturation. As the decree on the pastoral office of bishops in the Church *Christus Dominus* clearly states, from the earliest centuries of the Church, bishops in authority over particular churches inspired by fraternal charity and urged by the zeal for the mission to all people, acted in a collegial manner and for this purpose "synods, provincial councils and finally plenary councils were established" (CD 36).

The Apostolic Council of Jerusalem in which the apostles and the elders settled the question of circumcision and the applicability of the Jewish law to the gentile Christians, is generally considered as the archetype and model of all synods and councils. Taking impulse from the Council of

Jerusalem, bishops, the successors of the Apostles, acted in a collegial manner in confronting important canonical, doctrinal and administrative problems of each local Church having a homogeneous socio-cultural background as well as political circumscription; and thus provincial synods, patriarchal synods and other regional councils originated.

The ecumenical councils of the early Church recognized and confirmed the emerging collegial episcopal bodies and promulgated laws regarding their functioning, competence, membership, etc. ¹² In fidelity to the common tradition of the Church, collegial episcopal bodies like provincial and patriarchal synods always endured in the East, and they are still playing an important role in the government of the Church. The patriarchal or major archiepiscopal synods of the new Eastern Code are really the continuation of the local synods of the first millennium.

As far as the Western Church is concerned, we notice a gradual decadence of synods and councils as a result of the development of the monarchic ecclesiology which effectuated a high concentration of power in the central organ and obfuscated the collegial dimension of episcopacy. So a new institution which fosters communion and concord among the bishops and coordinates common pastoral action became absolutely necess- ary. Bishops' conferences spontaneously emerged in different parts of the world to provide for this inevitable exigency.

The first informal meetings of bishops which paved the way for the bishops' conferences in the present form appeared only in the first half of the nineteenth century. The CIC 1917 made only an indirect reference to bishops' conferences (c. 292). It is only with the promulgation of Christus Dominus on 28 October 1966 that the bishops' conference received the official status of an ecclesiastical institution (CD 36). The CIC 1983 further regulated the functioning of bishops' conferences (cc. 447-459). Thus, the bishops' conference is a new institution whose theologico-

See the Council of Nicaea (325) cc. 4-6; the First Council of Constantinople (381), c. 2; the Council of Chalcedon cc. 9, 17, 28; the Second Council of Nicaea (787) cc. 3, 6.

juridical ramifications and multifarious competencies are still under investigation.

3. Synod and Bishops' Conference as Permanent Institutions

According to the common law, the synod of bishops of a patriarchal or major archiepiscopal Church can be convoked at any time (c. 106); however, the synod is not always in act. Even then the synod is a permanent institution because it is a juridical person in accordance with canons 920-930 of CCEO which functions according to its own statutes and canons 931-935 regarding juridical acts. The patriarch or major archbishop, who is the permanent president and head of the synod and who promulgates and interprets the laws and executes the decisions of the synod, also guarantees its permanent functioning.

Furthermore, the permanent synod which consists of the patriarch or major archbishop as president and four members of the synod (three members elected and one nominated) functions as a representative body of the synod of bishops in the patriarchal curia in a permanent manner (cc. 115-121). The synodal tribunal of three bishops - a general moderator for the administration of justice and two other bishops elected by the synod - conducts the judicial business of the patriarchal or major archiepiscopal Church with the exception of appeals reserved to the full synod. Moreover there are different episcopal commissions, like the liturgical commission (c. 114 § 1), ecumenical commission (c. 904 § 2), catechetical commission (c. 622 § 1), commission for evangelization, etc., which continuously strive to implement the decisions and materialize the policies and programmes of the synod. Hence the synod is a permanent institution which functions in a regular manner through its various organs.

As we accentuated above, the bishops' conference is also a permanent institution, (c. 477) which enjoys a juridical personality by virtue of the law itself (c. 449 § 2) and which functions according to the general norms concerning juridical persons (cc. 113-123) and according to its own statutes promulgated by the bishops with the approval of the Holy

See (c. 451). Though according to the common law the general assembly takes place only once a year, bishops' conference is a permanent institution since it has stable organs like the president, vice-president, general secretariat, executive body, permanent council and various other commissions and offices which conduct the day-to-day business of the conference.

In the place of the permanent synod of a patriarchal or major archiepiscopal Church, the bishops' conference is endowed with a permanent council or committee which normally consists of the president, vice-presidents, general secretary and other members determined in the statutes of each conference (c. 457). This permanent council prepares the agenda for the plenary meeting of the conference and ensures that the decisions made at those meetings are duly executed. The permanent council can conduct other business on behalf of the conference, even on its own initiative, but subject to the norms laid down in the statutes and the common law. The bishops' conference also has various episcopal commissions and committees which operate in a permanent manner.

4. Membership in the Synod and Conference

1. According to the most ancient and common tradition of the Church, the source of the whole episcopal power is episcopal consecration and not election nor nomination. It is only by episcopal consecration that a person participates in the high priesthood and ministerial office of Christ and becomes a successor of the apostles and an authentic witness of the apostolic faith and the apostolic tradition. The Second Vatican Council rejecting the jurisdictional approach, developed in the Western Church in the second millennium, rehabilitated the profound tradition of the Church, according to which "Episcopal consecration, along with the office of sanctifying, confers also the offices of teaching and governing" (LG 21). Hence nobody can become a bishop without episcopal ordination. Both Codes of canon law unambiguously affirm that only those who are in sacred orders are capable of the power of governance (CCEO c. 979; CIC c. 129). In accordance with this canon, only bishops can exercise the "episcopal power of governance".

In harmony with the ancient tradition of the Church, reinstated by Vatican II, the new Eastern Code determines that "all and solely <u>ordained</u> bishops" are members of the synod of a patriarchal or major archiepiscopal Church (102 § 1). According to common law all ordained bishops - eparchial bishops, coadjutor bishops, auxiliary bishops and retired bishops - are *de iure* members of the synod. Episcopal consecration is the only criterion for membership in the synod. Hence those who are elected (or nominated outside the territory) and proclaimed, but not yet ordained cannot be members of a synod.

In the bishops' conference membership is determined on the basis of a double criteria - episcopal ordination and episcopal governance, namely the exercise of a certain pastoral function within the territory of the conference. Of these two the more significant element is that of pastoral office. Hence all ordained bishops are not de iure members of the conference: titular bishops who do not exercise in the territory a special office assigned to them by the Apostolic See or by the bishops' conference are not de iure members. On the other hand, those who are considered equivalent to the diocesan bishops in law. such as territorial prelates or abbots, apostolic vicars or prefects and apostolic administrators, are members of the conference, though they are not consecrated bishops (c. 450 § 1). In short, all ordained bishops are not de iure members of the conference while certain non-ordained persons who exercise pastoral function equal to that of a bishop are members.

Episcopal consecration is the only criterion for membership in the synod of Catholic Eastern Churches, and therefore all ordained bishops whether or not they enjoy any pastoral office are *de iure* its members. According to Eastern tradition no one can exercise episcopal pastoral office, unless he is a consecrated bishop. In the Latin Church non-ordained persons can also exercise episcopal jurisdiction, and hence such persons are also *de iure* members.

2. Only ordained bishops of the same Church are members of the synod, wherever they are constituted (c. 102 § 1). The membership is determined on Church-basis. Hence bishops of other Churches sui iuris exercising their ministry in the same territory or persons originally of the same Church

but ordained for another Church *sui iuris* cannot be members of the synod. Though the bishops' conference is a hierarchical instance of the Latin Church, constituted on the basis of *nation* or territory for fostering episcopal communion and cooperation, bishops of other Churches can be invited either with a deliberative or consultative vote according to the statutes of each conference (c. 450 § 1). In fact in many bishops' conferences of the Latin Church (that is, Canada, United States of America, Australia, etc.) bishops of the Eastern Catholic Churches participate even with deliberative vote.

- 3. Participation of lay people: according to the ancient tradition of the Church only bishops are members of the synod or councils. Both the bishops' conference and the synod of bishops, as their very name indicates, are episcopal bodies; and therefore neither priests, nor religious, nor lay people can be its members, though non-episcopal hierarchs and experts can be invited for the expedition of certain matters. In principle the episcopal character is preserved in both of the episcopal bodies.
- 4. The apostolic nuncio is not a member of the synod, nor of the bishops' conference. The Latin Code is silent about the participation of the papal legate in the bishops' conference. But according to the present practice as decreed by Pope Paul VI, though not a member of the conference, the legate will attend the first meeting of each plenary session. He is entitled to attend other meetings if he is invited by the bishops or is sent by the Holy See. The Eastern Code does not foresee any participation of the papal legate in the synod.

5. Deliberative Vote in the Synod and Conference

According to *ius commune*, all ordained bishops of the same Church, namely eparchial bishops, coadjutor bishops, auxiliary bishops, bishops *emeriti*, wherever they are constituted enjoy a deliberative vote, though particular law of any Church *sui iuris* can restrict the deliberative votes of titular bishops and bishops who exercise their ministry outside the territory except in the election of patriarchs, bishops and candidates for the episcopal office outside the territory (c. 102). But in the bishops' conference only diocesan bishops, those who are equivalent to them in canon law, and coadjutor

bishops have *de iure* deliberative vote (c. 454 § 1). The deliberative or consultative nature of the vote of auxiliary bishops and other titular bishops who are members of the conference are regulated by the statutes of each conference (c. 454 § 2). As we indicated above, titular bishops who do not exercise in the territory any office assigned to them either by the Apostolic See or by the bishops' conference itself are not members of the conference.

Since all bishops of the same Church have de *iure* deliberative vote in the synod, titular bishops can also vote before their votes are restricted, and it follows naturally that they can also vote on the question of their deliberative or consultative vote. In the bishops' conference only the diocesan bishops, those equivalent to them in law and coadjutor bishops have deliberative vote in drawing up or modifying the statutes (c. 454 § 2). Therefore, the deliberative votes of auxiliary bishops and other titular bishops who are members of the conference are determined by the diocesan bishops themselves (including those who are equivalent to them in law). Hence the pre-eminent position of diocesan bishops who are heads of particular Churches, is respected in the Latin Code.

As we expounded upon in other places, according to genuine Eastern tradition only eparchial bishops participate in the synod with a deliberative vote in their capacity as heads of eparchial Churches, representing their Churches in the synod. This is a great ecclesiological principle, according to which a bishop participates in the synod not as a private individual but as the head of an eparchial Church, and hence those titular bishops who do not have a Christian community to represent may not participate in the synod with an equal status to eparchial bishops. But the new Eastern Code, violating this ecclesiological principle of the East, considers all ordained bishops of the same Church as equals and makes no distinction in common law between eparchial bishops and titular bishops regarding membership and vote, even though each Church has the possibility to restrict the deliberative vote of titular bishops except in the election of patriarchs, bishops and candidates for episcopacy outside the territory. It can be contented that coadjutor bishops and auxiliary bishops are somehow connected with an eparchial Church, but the participation of retired bishops who do not exercise

any pastoral function with a deliberative vote in the synod just like the eparchial bishops is incomprehensible. In this way the new Eastern Code tramples down a great ecclesiological tradition, held in high esteem in the whole Christian East, according to which every bishop is indissolubly bound to a Christian community (eparchy) and participates in the synod for his community and from within his community as its father and head. On the other hand, according to the Latin Code titular bishops except coadjutor bishops have no deliberative vote, though diocesan bishops who enact the statutes can grant deliberative vote to titular bishops. Hence in this regard the Latin Code appears to be more Eastern than the Eastern Code.

According to the common tradition of the Church, reestablished by Vatican II, a person becomes a bishop and receives his powers through the action of the Holy Spirit in the episcopal ordination. But according to the Latin Code some non-ordained persons are equated with bishops and are also members of the bishops' conference with a deliberative vote just like the diocesan bishops. In this regard the common tradition of the Church and the sacramental theology of Vatican II should be seriously considered.

Integrating the norms of both Codes and respecting the common tradition of the Church and the sacramental theology of Vatican II, I am of the opinion that in principle only ordained bishops who are heads of eparchial or diocesan Churches should be *de iure* members of the synod of bishops of the Eastern Churches and the bishops' conference of Latin Church with a deliberative vote. Titular bishops who enjoy a certain pastoral office and those non-bishops who are equated with the diocesan bishops in the Latin Code may be members of the synod or conference, but only with a consultative vote. Other titular bishops may be invited only as guests.

6. Statutes of the Synod and the Conference

In the initial formulation or subsequent modification of the statutes of the bishops' conference only the diocesan bishops, coadjutor bishops, and those who are equivalent to them in law (excluding titular bishops) have a deliberative vote. Since the common law grants deliberative vote to all the ordained bishops of the same Church, in the formation of

the statutes of the synod of bishops the titular bishops have also deliberative vote.

The statutes of the synod of bishops is enacted by the synod itself and promulgated by the patriarch or major archbishop without any intervention from a higher authority. No review, recognition or approval of the Apostolic See is needed. Whereas the statutes of the bishops' conference, enacted by the conference, must be reviewed by the Apostolic See (ab Apostolica Sede recognoscenda, c. 451) before the promulgation.¹³

7. The Juridical Figure of the Patriarch and the President of the Conference

The legal minimum for the role of the president is to preside over the plenary meetings of the conference and over its permanent council or executive body and to forward to the Apostolic See a report of the acts and a copy of any decree from each plenary meeting (c. 456). He may have other responsibilities in keeping with the statutes, but he cannot act in the name of all bishops unless it is a matter for which special competence has been given or each and every bishop consents. A Canon 455 § 4 explicitly states that except in cases of general decrees "the competence of each diocesan bishop remains intact" and "neither the conference nor its president can act in the name of all the bishops unless each and every bishop has given his consent". Hence, the president of the bishops' conference practically has no powers outside the territorial boundaries of his diocese.

The juridical figure of the patriarch or major archbishop cannot be even compared with the president of the bishops' conference who is elected for a fixed term. The

¹³ According to CCEO canon 171 the statutes made by the council of hierarchs of a metropolitan sui iuris Church should be transmitted to the Apostolic See (Sedi Apostolicae transmittenda), although nothing is explicitly stated about review or approval.

¹⁴ J. H. PROVOST, "Groupings of Particular Churches", 367; P. V. PINTO, Commento al codice di diritto canonico. 265.

patriarch or major archbishop according to CCEO is the pater et caput of a Church (c. 55) and the permanent president of the synod (c. 103), who enjoys ordinary and proper power (c. 78 § 1) over all bishops, metropolitans and other Christian faithful of the Church over which he presides (c. 56). Thus, while the patriarch or major archbishop has super-episcopal and super-metropolitan prerogatives and exercises vigilance and supervision over bishops, clergy, religious and other Christian faithful of the same Church, the president of a conference does not have such powers.

The patriarch or major archbishop, either by himself or with the consent or counsel of the permanent synod or with the consent of the synod of bishops, enjoys major administrative powers in the whole Church over which he presides. 15 For example, with the consent of the synod of bishops and having consulted the Apostolic See, the patriarch can erect provinces and eparchies, modify their boundaries, unite, divide, or suppress them, modify their hierarchical rank and transfer eparchial sees (c. 85 § 1). Similarly, with the consent of the synod of bishops, the patriarch or major archbishop can grant an eparchial bishop a coadjutor or auxiliary bishop and transfer a metropolitan, eparchial bishop or titular bishop to another metropolitan, eparchial or titular see (c. 85 § 2). Moreover, with the consent of the permanent synod, he can erect, modify and suppress exarchies (c. 85 § 3). The president of a bishops' conference cannot perform such acts either alone or together with the conference in a collegial manner. Therefore, the conference of bishops completely lacks the juridical figure of a patriarch or major archbishop in the Eastern Churches.

As we have already underlined, the main difference between patriarchal or major archiepiscopal Churches and bishops' conference consists in the fact that the synod of bishops together with its head the patriarch or major archbishop constitutes an intermediary structure between eparchial bishops and the supreme authority of the Church, while the bishops' conference as it exists at present has not yet reached the level of an intermediary structure.

¹⁵ For the great privileges and prerogatives of the patriarch and major archbishop, see CCEO cc. 78-101.

8. Major Powers of the Synod in Comparison with the Powers of the Conference

8.1. Legislative Power

According to the common tradition of the Church, the synod is a legislative body which from the very inception of the Church enacted and promulgated doctrinal and legislative decrees for the regulation of Christian life at the provincial, regional or patriarchal as well as universal Church level. As the document of the World Council of Churches, The Importance of the Conciliar Process in the Ancient Church for the Ecumenical Movement, rightly underscores, "The councils of the early Church issued doctrinal decrees and determined Canon Law. As a rule they came together to protect the truth against error or internal danger. They fulfilled a task in a particular historical moment. They taught a necessarium, but did not present a compendium of theological truths. They emphasized fundamental truths, given in the tradition of the Church". 16

During the *iter* of the Latin Code the code commission made clear that the bishops' conference is not primarily a legislative body directed towards the centralization of ecclesiastical governance, but "an organ of union and communication of bishops among themselves, so that in the governance of their own dioceses each one can proceed with the insights of prudence and experience in the light of common consultation (CD 37), and therefore in the same conciliar decree it was established that the decisions of conferences would have obligatory force only in expressly defined cases (CD 38)". Though the conference is not primarily a legislative organ, it enjoys legislative power in very limited cases under strict and rigorous conditions in accordance with CIC canon 455, which is substantially a reiteration of CD 38 (4).18

¹⁶ WCC, Councils and the Ecumenical Movement, 14.

¹⁷ Communicationes 14 (1982) 199. For the text see footnote n. 9.

 $^{^{18}}$ For the legislative power of the conference, see chapter 7, heading nn. $5\ \&\ 6.$

- 1. The synod of bishops has ordinary and proper power to legislate on all matters that are not contrary to the laws of the universal Church and the law common to all the Eastern Churches (110 § 1), while the conference of bishops can make juridically-binding *decreta generalia* only in precisely determined and limited cases stipulated in the Code or in other particular cases if specially mandated by the Apostolic See (c. 455 § 1).
- 2. The patriarch or major archbishop can promulgate the laws and decisions enacted by the synod of bishops without any intervention from a superior authority (c. 111 § 1) except in those limited instances for which the prior consultation or subsequent approval of the Apostolic See or the Roman Pontiff is explicitly established. The only requirement is that acts regarding laws and decisions are to be sent (mittantur) to the Roman Pontiff as soon as possible (111 § 3). However, decrèta generalia, voted by the bishops' conference, cannot be validly promulgated without a previous revision (recognitio) by the Apostolic See (455 § 2).
- 3. According to *ius commune*, the synod of bishops can decide a law by an absolute majority of those who are present if a quorum of the majority of bishops who are obliged to attend the synod is present, excluding those who are legitimately impeded (c. 104)²⁰ But the conference of bishops can enact a juridically-binding general decree only if two-thirds of the members of the conference having a deliberative vote approve it (c. 455 § 2). Thus in the bishops' conference the decision regarding a general decree is very difficult, while theoretically in the synod of bishops a minority of bishops can impose a decision on a majority.²¹ The synod of bishops is also free to

¹⁹ Laws and norms of a metropolitan sui iuris Church are to be only received (receptione) by the Apostolic See before promulgation (c. 167 § 2).

²⁰ Regarding quorum and decisive majority the same norm is applied also in metropolitan *sui iuris* Churches (c. 107).

Thus if 50 bishops are obliged to attend the synod in an Oriental Church, and if 10 bishops are legitimately impeded, the quorum is fulfilled if 21 bishops are present. A law can be made in the synod if 11 bishops approve it. Thus theoretically, 11 bishops can impose a law upon 39 bishops.

determine how many votes and ballots are required for synodal decisions (107 § 2), but the bishops' conference cannot do so, at least for *decreta generalia*.

- 4. All metropolitans, bishops and other Christian faithful of a patriarchal or major archiepiscopal Church within the territory are juridically bound by all the laws and decisions of the synod of bishops of the same Church (110 § 1). But the decisions of the bishops' conference, except the *decreta generalia*, promulgated according to the rigorous conditions of the CIC 455 §§1-2, do not have any juridically binding force, and the competence of each diocesan bishop remains intact (c. 455 § 4).²²
- 5. The scope of particular law is limited in the Latin Code. ²³ In many cases the task of the conferences is simply to provide norms in very specific and delimited matters, or to choose among alternatives quite precisely defined by the Code itself. ²⁴ But ample space is left for particular law in the Eastern Code, by way of explicit prescription in the Code or by way of omission of many canons from the old legislation to the extent that each Church can make its own particular supplementary code. As we have indicated above, the conference has legislative power only on those matters explicitly prescribed in the Code, while the synod can legislate on any matter, unless it is contrary to the common law.

8.2. Electoral Powers

The synod of bishops almost freely elects the patriarch, who is the *pater et caput*, and new bishops of the same Church within its territorial boundaries in a collegial manner according to the common tradition of the Church.²⁶ If a bishop

²² The decisions of the council of hierarchs of a metropolitan *sui iuris* Church also bind all the bishops and Christian faithful of the same Church.

²³ See chapter 8, heading n. 6.

²⁴ G. FELICIANI, "Episcopal Conferences from Vatican II to the 1983 Code", 22.

²⁵ See chapter 3, heading n. 1.2.3.

²⁶ For the electoral powers of the synod, see chapter 3, headings 3 & 4.

is elected from the list of candidates already assented by the Roman Pontiff, the synod can proceed to the proclamation and episcopal consecration without any intervention of a higher authority. However, if the synod elects somebody who is not on the assented list, confirmation from the Roman Pontiff is necessary.

The bishops' conference has practically no electoral powers. The election of the president of a conference for a fixed term of office is very insignificant compared to the election of a patriarch or major archbishop, who is the pater et caput of the same Church and who enjoys vast powers According to canon 377 § 1, the supreme Pontiff freely appoints bishops or confirms those who have been legitimately elected.²⁷ Thus the canon foresees also the possibility that the pope can confirm those who have been properly elected in the Latin Church as well: but until today there is no provision for a bishops' conference to enjoy such a right of election.28 The only possible participation of the bishops' conference in the appointment of bishops consists in the submission of a list of candidates to the Apostolic See at least every three years without prejudice to the right of every bishop to forward to the Holy See his own list (c. 377 § 2).29 The pope is not bound to nominate from the list submitted by the conference or the diocesan bishop.

8.3. Judicial Powers

According to the judiciary system of the Eastern Churches, the synod of bishops of a patriarchal or major archiepiscopal Church is the superior tribunal of the same Church which together with other minor tribunals adjudicates in all three instances up to the final sentence, without

²⁷ "Episcopos libere Summus Pontifex nominat, aut legitime electos confirmat". CIC c. 377 § 1.

²⁸ P. KRÄMER, "Episcopal Conferences and the Apostolic See", 141; P. COLELLA, "Considerations on the Nomination of Bishops in Current Canon Law", 98-102.

According to canon 377 § 2, normally the list is submitted by "Episcopi provinciae ecclesiasticae" and only "ubi adiuncta id suadeant, Episcoporum conferentiae" enjoys this power.

prejudice to the competence of the Roman Pontiff and the Apostolic See regarding the cases reserved to them in the common Code.³⁰

The judiciary system of the Latin Church evidences that the bishops' conference has practically no judicial power. The tribunal of third instance is always in Rome and also the second instance if the appellant so wishes.³¹ However, the bishops' conference has some minor powers in connection with judicial procedures, such as the establishment of tribunals of second instances with the approval of Apostolic See (c. 1439), the permission for lay persons to be appointed judges (1421 §2), and authorization for bishops to use single clerical judge courts if a collegiate tribunal cannot be established (1425 § 4).

8.4. Administrative Powers

In a patriarchal or major archiepiscopal Church, the synod of bishops itself or the patriarch or major archbishop with the consent of the synod of bishops, or with the consent or counsel of the permanent synod, enjoys vast administrative powers. The bishops' conference can exercise some administrative powers, many times with the approval of the Apostolic See, and only in minute matters.

Conclusion

Though some of the official documents and ecclesiologists of the Latin Church consider the synod of bishops and the bishops' conference as parallel institutions, their differences are greater than their similarities. The synod of bishops enjoys vast legislative, judicial, electoral and administrative powers, but the conference of bishops has very limited legislative power and only some administrative powers in very minute cases. It has practically no electoral and

 $^{^{30}}$ For the judicial powers of the synod, see chapter 3, heading n. 2.

³¹ For the judiciary system of the Latin Church, see chapter 8, heading n. 7.

³² See chapter 4, entitled "The Rights and Obligations of the Synod of Bishops".

judicial powers. It is very difficult to find any striking parallel between the juridical figure of the patriarch or major archbishop and the president of the bishops' conference. However, the bishops' conference can be seen as a spontaneous attempt of the bishops of the Latin Church to re-establish the lost synodal element in this Church, which bore fruit to a certain extent in the Second Vatican Council and CIC 1983.

From an Eastern perspective the Western Church remains a single patriarchate, and hence there is nothing strange or extraordinary in the involvement of the patriarch of the West in the functioning of the local episcopal bodies of the West. In fact in the East a canonical synod is impossible unless convoked and presided over by the patriarch or major archbishop (except the one convened by the administrator for the election of a patriarch or major archbishop). Since the Latin Church remains a single patriarchate, the participation of the pope, the patriarch of the West, in the government of every local Church is inevitable. But the same criterion cannot be applied to the Eastern Churches that have a patriarch or major archbishop as their father and head, as did occur in the second millennium until the celebration of Vatican II. With regard to the patriarchal and major archiepiscopal Churches, the pope has no patriarchal power. but only primatial power.

Chapter Eleven

ASSEMBLIES OF HIERARCHS OF SEVERAL CHURCHES SUI IURIS

Introduction

The Catholic Church is a communion of different Churches sui iuris: the Latin Church and the Eastern patriarchal, major archiepiscopal and metropolitan Churches.1 The episcopal body of the Latin Church which realizes the communion and collaboration among the Latin Ordinaries of a nation or territory is the bishops' conference.2 The Eastern patriarchal and major archiepiscopal Churches have synods, while the metropolitan Churches sui iuris are endowed with the councils of hierarchs for the internal Church government.3 The reality of the Catholic Church as a communion of different Churches sui iuris is manifested also at the local level in those countries where different Churches coexist. The Code of Canons of the Eastern Churches established a new institute called the assembly of hierarchs of several Churches sui iuris for ensuring the collaboration and cooperation of the hierarchs of different Churches for the common good of the entire Catholic Church in a nation or region, but without jeopardizing the right of every Church to govern itself according to its own discipline and spiritual heritage.

In this chapter, first we focus our attention on the reality of multiple jurisdiction which necessitates the collaboration of the different Churches for the common good of the entire Catholic Church in a nation or region. Then we outline the

According to the Eastern Code, in addition to these three forms of Churches, there is another category called "other Churches sui iuris" to which belong those Eastern Churches which are neither patriarchal nor major archiepiscopal nor metropolitan (c. 174). In fact these "remainder Churches", very often headed by a single hierarch, is a Church in the embryonic stage.

² See chapter 8, The Bishops' Conference of the Latin Church.

³ See chapters 2-4 for the synod of bishops and chapter 5 for the council of hierarchs.

nature, purpose and functioning of the assemblies of hierarchs of several Churches *sui iuris* based on the relevant decrees of the Second Vatican Council, the Codes of canon law, and the statutes of the already-existing inter-ecclesial assemblies.⁴

1. The Reality of Multiple Jurisdiction

With the coming of the Crusaders and the founding of the Latin patriarchates from the end of the eleventh century onwards the Latin jurisdiction was established in many traditionally Eastern territories. The first Latin patriarchates were established in Jerusalem and Antioch (in 1099). The Fourth Crusade led to the occupation of Constantinople and the creation of a Latin patriarchate there in 1204, and a bit later also in Alexandria.⁵ When the Crusaders' kingdoms came to an end the Latin patriarchs of the Eastern regions were considered titular patriarchs and for many centuries they were dignitaries of the papal court. Pope Pious IX (1846-1878) reconfirmed the Latin Patriarchate of Jerusalem and restored jurisdiction to its patriarch with the apostolic letter "Nulla celebrior" of 23 July 1847.6 At present the Latin patriarch of Jerusalem has jurisdiction over the Latin Catholics in Palestine, Jordan and Cyprus.⁷ In January 1964, Pope Paul VI definitively suppressed the Latin patriarchates of Alexandria, Antioch and Constantinople.8 However apostolic vicariates or diocese were erected for the pastoral care of the Latin Christians in these regions. The Latin iurisdiction began in India with the arrival of the Portuguese missionaries in the beginning of the sixteenth century and

⁴ We consider only the statutes of the five well-established inter-ecclesial assemblies: Egypt, Lebanon, Syria, India and the Holy Land.

⁵ G. REZAC, "The Extension of the Power of the Patriarchs", 60-61; T. KANE, The Jurisdiction of the Patriarchs, 77-82; For a detailed analysis of the origin and progress of the Latin Church in the Eastern territories of Alexandria, Antioch, Jerusalem and Constantinople, see FEDALTO, La Chiesa latina in Oriente, Roma 1985.

⁶ R. DE MARTINIS, Ius Pontificium de Propaganda Fide, pars 1, vol. 6, 40-44; Annuario Pontificio 1997, 1798.

⁷ Anuario Pontificio 1997, 5-6.

⁸ Anuario Pontificio 1997, 1799.

the erection of the first Latin diocese in Goa on 31 January 1533.9

The presence of the Eastern Christians in the West is the result of the mobility of peoples and the phenomenon of immigration, especially in the nineteenth and twentieth centuries provoked by Islamic and communist suppression, civil wars and tragedies as well as other socio-political and economic reasons. Enormous groups of Eastern Christians found their safe havens in North America and Western Europe. The effective pastoral care of these faithful urged the establishment of Eastern parishes and eparchies in the countries of their immigration. At present Eastern jurisdiction exists in Western countries such as Argentina, Canada, the United States, Mexico, Germany, France, Italy, Australia, England, etc. 10

Similarly in traditional Eastern territories like Egypt. Ethiopia, Greece, Kerala (India), Iraq, Iran, Israel, Lebanon. Syria. Turkey, etc., different Churches sui iuris coexist. We present in detail only the ecclesial situation of those countries where some kinds of assemblies of hierarchs of several Churches sui iuris are already functioning. The Annuario Pontificio 1997, after listing the bishops' conferences (pp. 1084-1101), dedicates a title to the synods of bishops of the patriarchal and major archiepiscopal Churches and assemblies of hierarchs of several Churches sui iuris (pp. 1102-1103). Under this title four assemblies of hierarchs of several Churches sui iuris (Egypt, Lebanon, Syria and the Holy Land) and an inter-ritual union of bishops (Irag) are enumerated (p.1103). In Egypt, Lebanon, Syria and the Holy Land assemblies of hierarchs are regularly functioning with their own statutes and permanent organizational structures like the presidency, standing committee, general secretariat and different episcopal commissions. In Iraq there exists only an informal gathering of hierarchs under the presidency of the Chaldean patriarch. In other countries where multiple

⁹ For a short history of the origin of the Latin Church in India, P. PALLATH, Pope John Paul II and the Catholic Church in India, 21-33.

¹⁰ Cf. Anuario Pontificio 1997, 1109-1147.

jurisdiction exists, inter-Church assemblies have not yet been formally established with statutes and permanent organisms.¹¹

The Catholic bishops' conference of India (CBCI). though wrongly designated "conference", is really an inter-Church assembly in which the bishops of the three Catholic Churches in India participate with equal rights and obligations. 12 Currently each of the three Churches in India has its own episcopal body: the Syro-Malabar Major Archiepiscopal Church has a synod of bishops: the Syro-Malankara metropolitan sui juris Church has a council of hierarchs and the Latin Church has a conference according to the norms of CD number 38, 1-5 and CIC canons 447-459, called Conference of Catholic Bishops of India - Latin Rite (CCBI - L.R.). In the Annuario Pontificio the inter-Church assembly named "Catholic Bishops' Conference of India" (CBCI) is listed not among the assemblies of hierarchs of several Churches sui iuris, but under bishops' conferences and according to the indication given (four asterisks ****) it is under the supervision of two dicasteries: Congregation for the Oriental Churches and the Congregation for the Propagation of the Faith. 13 The name of the bishops' conference of the Latin Church in India (CCBI-LR) is given only in the footnote.¹⁴

1. Egypt: the Catholic Church in Egypt is a communion of seven Churches *sui iuris* (represented). Egypt is the centre of the Coptic Catholic Patriarchal Church with five eparchies. In addition, the following Churches *sui iuris* are represented in Egypt: the Armenian Patriarchal Church - an eparchy; the Chaldean Patriarchal Church - an eparchy; the Greek Melkite

¹¹ Cf. G. MADATHIKANDAM, CBCI: An Inter-Ecclesial Assembly, 156.

¹² For detailed study, see G. MADATHIKANDAM, CBCI: An Inter-Ecclesial Assembly, 168-254.

¹³ Annuario Pontificio 1997, 1091.

¹⁴ It would be better to place the inter-Church assembly: the Catholic Bishops' Conference of India (CBCI) under the title Sinodi dei Vescovi delle Chiese Patriarcali e Arcivescovili maggiori e Assemblee dei Gerarchi di Chiese Sui Iuris and to put the Bishops' Conference of the Latin Church in India (CCBI-LR) in its proper place.

patriarchal Church - an exarchy; the Latin Church - an Apostolic Vicariate; Maronite Catholic Church - an eparchy; Syrian Patriarchal Church - an eparchy. An Inter-Church assembly was functioning in Egypt even before the Second Vatican Council, which became regular after the Council with permanent structures and official statutes. The statutes were approved by the Holy See on 5 December 1983. 17

- 2. Lebanon: the Catholic Church in Lebanon is a mosaic of six jurisdictions, where three Catholic patriarchs reside, namely the patriarch of Antioch of the Maronites (the head of the Maronite Catholic Church) the patriarch of Antioch of the Syrians (the head of the Syrian Catholic Church) and the patriarch of the Cilicia of the Armenians (head of the Armenian Catholic Church). Moreover, the Chaldean Church has one eparchy; the Greek Melkite Church seven eparchies; and the Latin Church an Apostolic Vicariate. An assembly of the patriarchs and Catholic bishops of Lebanon was instituted in 1967. The statutes were enacted by the assembly of 8 April 1975.
- 3. Syria: Damascus is the residence of the Greek Melkite patriarch (the head of the Melkite Catholic Church). The Melkite Church has five eparchies in Syria. In addition, the Armenian Church is present with two eparchies; the Chaldean Church one eparchy; the Latin Church an Apostolic Vicariate; the Maronite Church three eparchies and the Syrian Church four eparchies. In Syria even before the Second Vatican Council inter-Church assemblies were

¹⁵ Annuario Pontificio 1997, 1111.

¹⁶ G. MADATHIKANDAM, CBCI: An Inter-Ecclesial Assembly, 163-164.

¹⁷ Stàtuts de l'Assemblée de la Hierarchie Catholique D'Egypte (AHCE), in G. Madathikandam, CBCI: An Inter-Ecclesial Assembly, 261-262, (hereafter Egypte -Statuts).

¹⁸ Annuario Pontificio 1997, 1132-1133.

¹⁹ Textes Statutaires, reprinted in G. Madathikandam, CBCI: An Inter-Ecclesial Assembly, 263-266 (hereafter Lebanon; Textes Statutaires).

²⁰ Annuario Pontificio 1997, 1134.

held for confronting common problems. Statutes were promulgated in 1969.²¹

- 4. Iraq four jurisdictions coexist in Iraq. The patriarch of Babylon of the Chaldeans (the head of the Chaldean Catholic Church) resides in Baghdad. The Chaldean Church has ten eparchies in Iraq. The Latin Church has one archdiocese without any suffragans, and the Syrian Church has two eparchies.²²
- 5. India: the Catholic Church in India is the communion of three Churches: the Church of St Thomas Christians originated from the ministry of the Apostle St Thomas, and whose main heir is now called the Syro-Malabar Church; the Latin Church which owes its origin to the evangelization of the Portuguese missionaries in the sixteenth century and the Syro-Malankara Church, a group of Christian faithful returned to the Catholic communion in 1930, from those St Thomas Christians who embraced the "Jacobite faith" in the seventeenth century. At present the Latin Church has 106 dioceses; the Syro-Malabar Church 22 eparchies and the Syro-Malankara Church 4 eparchies. ²³ The statutes of the Catholic bishops' conference of India as an inter-ecclesial body were approved in the general body meeting held at Kottayam in 1988. ²⁴
- 6. The Holy Land: by the Holy Land we mean here Jerusalem and Palestine which cover the present state of Israel, Autonomous Palestine and Jordan. As we indicated above, the Latin jurisdiction in the Holy Land can be traced back to the occupation of Jerusalem by the first Crusaders and the erection of the Latin patriarchate there in 1099. The Latin Church currently has five bishops in the Holy Land: the Latin patriarch of Jerusalem and his four auxiliaries. Two

²¹ Statuts des réunions Périodiques de la Hiérarchie Catholique de Syrie, reprinted in G. Madathikandam, CBCI An Inter-Ecclesial Assembly, 266-269 (hereafter Syrie - Statuts).

²² Annuario Pontificio 1997, 1132.

²³ Annuario Pontificio 1997, 1130-1131.

²⁴ Statutes of CBCI, published from CBCI Centre, New Delhi 1990.

of the auxiliaries have the title of patriarchal vicars: one resides in Nazareth having jurisdiction in Galilee and the other in Amman who exercises authority in Jordan. The Greek Melkite Catholic Church has two eparchies: Akka in Israel and Petra and Filalefia in Jordan, as well as a patriarchal exarchate in Jerusalem (thus three bishops). Moreover the Syrian, Maronite and Armenian Churches each have a non-episcopal "patriarchal vicar". Hence there are now practically five Catholic jurisdictions in the Holy Land.

An inter-Church assembly named "the Assembly of the Catholic Ordinaries of the Holy Land" was formally constituted by the "Ordinaries and local hierarchs" of the region in 1991. The statutes approved by the ordinaries and hierarchs on 13 August 1991 were again amended by the plenary assembly held on 9 December 1991. Pope John Paul II approved and ratified the statutes in accordance with CCEO canon 322 on 27 January 1992.²⁵

Multiple jurisdiction is a reality that cannot be avoided. The unification of jurisdictions or the "formation of one rite" is neither acceptable nor practical. Therefore the only possibility is to foster healthy inter-Church collaboration and cooperation without risking the individuality, identity and spiritual heritage of each Church.

2. The Necessity of Inter-Church Cooperation and the Evolution of the Assembly of Hierarchs of Several Churches Sui Iuris

In countries where different Churches coexist, the collaboration of their hierarchies is an imperative for the promotion of the common good of the entire Catholic Church in the region and for the coordination of pastoral action. Therefore the former law of the Eastern Churches, the motu proprio *Cleri Sanctitati*, the Second Vatican Council as well as the new Eastern Code provide directives and norms for facilitating inter-Church cooperation.

For the statutes of the Assemblée des Ordinaires catholiques de Terre Sainte, together with the decree of approval of the Holy See and a brief commentary by M. Brogi, see Ius Ecclesiae 6 (1994) 832-842.

2.1. Inter-Church Cooperation according to Cleri Sanctitati

Cleri Sanctitati recommended that "Local Hierarchs who exercise jurisdiction in the same territory shall in mutual agreement promote unity of action among the clergy of the various Rites, and they shall by concerted efforts work toward common goals, in order to advance more expeditiously the good of religion and to insure with better efficiency the discipline of the clergy" (c. 4). This canon does not deal directly with inter-Church assembly but underlines the need for the cooperation of the clergy of different Churches for the good of religion and for the promotion of ecclesiastical discipline. Nevertheless canon 340 § 3 stipulates that "Bishops and other hierarchs of several Rites can convene in a synod after they obtained the permission of the Roman Pontiff, who designates the place where the synod shall meet, and appoints his legate who is to call together and preside over the synod". Though named a "synod", the canon deals with an assembly of the hierarchs of different Churches within the same territory with the permission of the Roman Pontiff and under his supervision. The Roman Pontiff also nominates a legate to convoke and preside over the assembly.

2.2. Inter-Church Assemblies according to Vatican II

In the documents of Vatican II there are only two passages which directly treat inter-Church assemblies. The decree on the Catholic Eastern Churches highlights the necessity of inter-Church assemblies: "Hierarchs of various individual Churches who exercise jurisdiction in the same territory should take care to further unity of action, after taking counsel among themselves in periodic meetings. They should also take care, with united forces, to help common activities for furthering the cause of religion more easily and safeguarding the discipline of the clergy more effectively" (OE 4).

The decree on the pastoral office of the bishops in the Church *Christus Dominus* also accentuates the necessity of inter-Church cooperation for the common good of the entire Church in a country or region: "It is earnestly recommended that, in promoting the discipline of their own Church in their synods, the prelates of the Eastern Churches should, for the

more efficacious encouragement of works for the good of religion, also take into account the common good of the whole territory where many Churches of different rites exist, by exchanging views in inter-ritual meetings, according to the norms to be determined by competent authority" (CD 38, 6).

Orientalium Ecclesiarum simply states: "Hierarchs of various individual Churches who exercise jurisdiction in the same territory", while CD number 38 § 6 is directed to the "prelates of the Eastern Churches", having in mind primarily the ecclesial situation in the Middle East. However the two texts, emanating from the same supreme authority of the Church, bind all hierarchs including Latins, who exercise jurisdiction in the same territory. Hence the assemblies of hierarchs of several Churches sui iuris is a common institution of the East and West for fostering communion and concord among the bishops who exercise their ministry in the same nation or region.

In addition to the passages which explicitly consider inter-Church assemblies, Vatican II underscores the need of the pastoral care of the Christian faithful of other Churches sui iuris which necessarily obligates inter-Church cooperation. Aware of the modern phenomenon of immigration and mobility of peoples, Vatican II orders that "Steps should therefore be taken for the preservation and enlargement of all the individual Churches throughout the world, and so parishes and their own hierarchy should be set up wherever the spiritual good of the faithful requires it" (OE 4). Christus Dominus number 23 clarifies how the eparchial bishops and the Holy See should provide for the pastoral care of the Christian faithful of different Churches:

²⁶ Cf. G. MADATHIKANDAM, CBCI An Inter-Ecclesial Assembly, 138-141; There is no doubt that the decree Orientalium Ecclesiarum promulgated by the supreme authority of the Church binds all Catholics as any other document of Vatican II in pertinent matters. In fact commenting on the Schema of the Decree some fathers proposed that the text concerning inter-Church assembly should be placed in Christus Dominus n. 38, but the Commission responded that "Non placet mutatio quia noster textus latis patet, quia considerat omnes Ecclesias, latina haud exclusa [...]". AS III 8, 569.

Likewise for the improvement of ministry, where there are faithful of a different rite, the diocesan bishop should make provision either through priests or parishes of the same rite or through an episcopal vicar with the appropriate faculties and, where circumstances call for it, with episcopal rank. Alternatively, the diocesan bishop himself may exercise the function of ordinary for different rites. For exceptional reasons, none of these measures may, in the judgment of apostolic See, be feasible. In this case, a special hierarchy should be set up for the different rite.

The establishment of personal parishes or a special hierarchy as indicated in the council documents naturally effects multiple jurisdiction and therefore indirectly implies the need of inter-Church cooperation and the necessity of suitable organs for the same.

2.3. Inter-Church Cooperation in the New Eastern Code

Though Christus Dominus and Orientalium Ecclesiarum clearly decreed the necessity of inter-Church assemblies for furthering the common good of the Catholic Church in a nation or region, the CIC 1983 did not make any provision for such assemblies. The Eastern Code on the other hand dedicates a title (title IX) which consists of a single canon with four parts (c. 322) to the assemblies of several Churches sui iuris. Furthermore many other canons also attend to inter-Church collaboration. After presenting the doctrine of the Code concerning inter-Church communion, we analyze canon 322 with the support of the statutes of the five inter-Church assemblies already indicated, in order to elucidate the nature and scope of this new institution of the Eastern Code.

1. Obligation of patriarchs: canon 84 obliges the patriarch to promote unity of action in consultation with the patriarchs and eparchial bishops of other Churches *sui iuris* who exercise their power in the same territory, especially in the inter-Church assemblies. The purpose of the assembly, according to the canon, is to "sustain common works which promote more expeditiously the good of religion, protect more effectively ecclesiastical discipline and foster more harmoniously the unity of all Christians". Similarly according to

- canon 95 § 2, if in the same place several patriarchs exercise power, it is expedient that in matters of greater importance they act after consulting with one another.
- 2. Obligation of eparchial bishops: canon 202 obliges the eparchial bishops of several Churches sui juris exercising their power in the same territory "to ensure that through the exchange of views in periodic meetings they foster unity of action and, by pooling resources, help forward common works the more readily to promote the good of religion and the more effectively to safeguard ecclesiastical discipline". The Code permits "general absolution" without prior individual confession only in the case of a grave necessity (c.720 § 2). The eparchial bishop can determine the cases of such necessity even through a general precept, but he must do so only after having held consultation with patriarchs and eparchial bishops of other Churches sui iuris who exercise power in the same territory (c. 720 § 3). The eparchial bishop is obliged to provide for the preservation of rite and the spiritual welfare of the Christian faithful of other Churches sui iuris within his eparchy (c. 193).
- 3. Norms for pre-nuptial investigation: the purpose of pre-nuptial inquiry is to establish the freedom of the parties to marry in order to prevent an invalid or illicit celebration of marriage. After consultation with the eparchial bishops of other Churches *sui iuris* exercising power in the same territory, in the particular law of each Church *sui iuris* norms can be issued concerning the examination of the parties (c. 784).
- 4. Commission of experts on ecumenism: for the promotion of ecumenical initiatives the Code prescribes an ecumenical commission for each Church *sui iuris*. If circumstances suggest so, this commission is to be set up in consultation with the patriarchs and eparchial bishops of other Churches *sui iuris* who exercise their power in the same territory (c. 904 § 2).
- 5. The same norms on taxes and offerings: patriarchs and eparchial bishops from various Churches exercising their power within the same territory, after consultation with each other, have to establish the same norms on taxes for the various acts of the power of governance and offerings made on the occasion of the celebration of the Divine Liturgy, of the

sacraments, of the sacramentals and of any other liturgical celebrations (c. 1013 §§ 1-2).

- 6. Common catechetical commission: the Code decrees the establishment of a catechetical commission and centre in each Church *sui iuris*, however it is possible to establish such a commission together with the other Churches *sui iuris* for the same territory or socio-cultural region (c. 622). A common catechetical commission and centre may be helpful if the different Churches in the same territory belong to the same liturgical family or if only minority groups of other Churches *sui iuris* are present in the territory (for example one or two eparchies) who are unable to establish their own commissions.
- 7. Establishment of a diriment impediment for marriage: the Code generally prohibits to establish a diriment impediment by the particular law of a Church *sui iuris*. Nonetheless, for a most serious reason such an impediment can be established after taking counsel with the eparchial bishops of other Churches *sui iuris*, to whom it is of interest. Moreover the synod has to consult the Apostolic See before making such a decision (c. 792).
- 8. Common tribunal: the eparchial bishops of various Churches *sui iuris* exercising power within the same territory can establish a common tribunal to adjudicate contentious or penal cases of the Christian faithful subject to one or other of these eparchial bishops, especially if suitable judges and other tribunal officers are lacking (c. 1068).
- 9. Common programme for priestly formation: each Church has the right to establish its own particular programme for priestly formation for seminaries of the same Church in accordance with the common law and spiritual heritage of the same Church (c. 330 §§ 1 & 3). By agreement a programme of formation common to an entire region or nation or even with other Churches sui iuris may be formulated, provided care is taken that the specific character of the rites suffer no harm (c. 330 § 2). However, it is not clear how a common programme can be formulated without being detrimental to the spiritual patrimony of each Church which has a liturgy, theology, spirituality and discipline different from other Churches unless the different Churches belong to the same liturgical tradition.

- 10. Common major seminary or admission of members into a seminary of other Church sui iuris: each Church sui iuris should have its own major seminary for the proper formation of clerics in accordance with its own liturgical theological spiritual and disciplinary heritage as well as peculiar ecclesial traits. But in extraordinary circumstances different Churches which have an eparchy in the same region or nation can establish a common seminary, especially if a Church cannot afford a seminary of its own because of the lack of well-trained moderators and teachers, as well as financial resources (c. 332 § 2). Likewise on account of special circumstances students of another Church sui iuris can be admitted into the same seminary, though it is highly preferable that a seminary be reserved to students of one Church sui iuris (c. 333). Regarding the establishment of a common seminary or admission of students to a seminary of another Church sui iuris, the Code establishes a very fundamental principle: "Students, even if admitted into a seminary of another Church sui iuris, or into a common seminary for several Churches sui iuris, are to be formed in their own rite. Any custom to the contrary is reprobated" (c. 343).
- 11. Participation in the patriarchal, major archiepiscopal or metropolitan assembly: according to common law representatives of other Churches *sui iuris* who exercise their ministry in the same territory can be invited to the assembly. The nature of their participation is to be determined by the statutes of each assembly.

3. Description of Assemblies of Hierarchs of Several Churches Sui Iuris (c. 322 § 1)

Wherever it seems advisable in the judgment of the Apostolic See, periodic assemblies are to be held of patriarchs, metropolitans of metropolitan Churches sui iuris, eparchial bishops, and, if the statutes state so, other local hierarchs of various Churches sui iuris, even of the Latin Church, exercising their authority in the same nation or region. These assemblies are to be convoked at regular intervals by the patriarch or another authority designated by the Apostolic See. The object of these meetings is that by sharing the insights of wisdom born of

experience and by the exchange of views, the pooling of their resources is ratified for the common good of the Churches, so that unity of action is fostered, common works are facilitated, the good of religion is more readily promoted and ecclesiastical discipline is preserved with better effect.

3.1. National or Regional Assembly

The canon states that periodic assemblies "are held of patriarchs ... exercising their authority in the same nation or region". From the wording of the canon it is obvious that two kinds of assemblies of hierarchs of several Churches sui iuris are possible; national assembly and regional assembly. In fact the assemblies of Egypt. Iraq. Lebanon and Syria are national assemblies in which all the hierarchs of the different Churches sui iuris exercising their power in the territorial boundaries of the proper nation participate. In India the CBCI is the national assembly of all the bishops and other hierarchs who are exercising the ministry in the whole of India. In addition to this there is a regional assembly in South India, called the Kerala Catholic Bishops' Conference (KCBC). Kerala is the cradle of Christianity in India where three Catholic Churches: the Syro-Malabar Church (13 eparchies), the Syro-Malankara Church (4 eparchies) and the Latin Church (10 dioceses) coexist. In fact, the assembly of the Catholic Ordinaries of the Holy Land covers different political states, namely Israel, Autonomous Palestine and Jordan. Therefore, inter-Church assemblies can be regional, national or international according to the special circumstances and needs of each place.

3.2. Frequency of Session

Regarding the frequency of the assemblies of hierarchs of several Churches *sui iuris*, two indications are given in the canon: "periodic assemblies are to be held[...]" and "These assemblies are to be convoked at regular intervals by the patriarch or another authority designated by the Apostolic See". The Code has not determined a fixed tenure for the convocation of the assemblies, but leaves freedom to the hierarchs of each nation or territory to decide the matter in the statutes, considering the particular circumstances and

needs of each country. According to the statutes of CBCI in India, ordinary general meetings of the conference are held every two years, but there is provision for the convocation of extraordinary general meetings as decided by at least a two-thirds majority of the members of the standing committee. ²⁷ In Egypt the assembly is held annually; in Syria twice in a year and in cases of necessity whenever one-third of its members request it; in Lebanon two ordinary sessions are held, but extraordinary sessions are foreseen in cases of necessity. In the Holy Land at least one plenary assembly is held each year.

3.3. President of the Assembly

Canon 322 § 1 decrees that the assemblies are to be convoked at regular intervals by the patriarch or another authority designated by the Apostolic See. In those countries where a patriarchal or major archiepiscopal Church exists (the supposition is that a single patriarchal Church is predominant in the territory), the patriarch or the major archbishop can convoke and preside over the assembly. But other arrangements like the designation of the authority by the Holy See are also possible.

In India, the president, two vice-presidents and a secretary general are elected by the ordinary general meeting of the assembly for a period of two years in such a way that each of the three Churches in India are represented among them.²⁸ In Egypt, the Coptic Catholic patriarch is the permanent president and the Greek Catholic patriarch the vice-president; other office bearers are elected for a period of three years.²⁹ The Maronite patriarch is the president of the assembly in Lebanon. In Syria and Iraq, the Greek Melkite patriarch and the Chaldean patriarch preside over the assembly respectively. The assembly of the Catholic Ordinaries of the Holy Land is presided over by the Latin patriarch of Jerusalem.

²⁷ CBCI, Statutes, Art. 13.

²⁸ Cf. CBCI, Statutes, Art. 22, 37 and Appendix 11.

²⁹ Egypte - Statuts, Art.3.

3.4. The Purpose of the Assemblies of Hierarchs of Several Churches

As regards the purpose of the assemblies the canon substantially reiterates the statements of Cleri Sanctitati and Vatican II: "the object of these meetings is that by sharing the insights of wisdom born of experience and by the exchange of views, the pooling of their resources is ratified for the common good of the Churches. so that unity of action is fostered, common works are facilitated, the good of religion is more readily promoted and ecclesiastical discipline is preserved with better effect". According to the canon the purpose of inter-Church assemblies include: a) sharing the insights of wisdom and exchanging of views; b) pooling resources for the common good of the Churches; c) furthering the unity of action; d) facilitating common works; e) promoting the good of religion: and f) preserving ecclesiastical discipline with better effect. Thus inter-Church assemblies are intended to guarantee not only the peaceful coexistence of the faithful belonging to different Churches, but also the creation of a single family of the children of God who love one another as Jesus loved us - a family which is one and at the same time varied.30

Pope John Paul II in his unprecedented letter addressed to the Bishops of India, by which as the supreme pastor of the universal Church, he has indubitably affirmed the right of each Church in India to establish its own episcopal body and paved the way for the conversion of the then existing Catholic bishops' conference of India into an inter-Church assembly, delineates the purpose of such assemblies in the following manner: "The national Conference of All Catholic Bishops of India is to continue for questions of common concern and of a national and supra-ritual character, questions involving the Catholic Church and the government, etc." Accordingly inter-Church assemblies attend only to questions

Off. The discourse of Pope John Paul II on the occasion of the presentation of the new Eastern Code to the Roman synod of bishops on 25 October 1990, L'Osservatore Romano, 27 October 1990, 4-5.

³¹ Letter of his Holiness Pope John Paul II to the Bishops of India, in P. Pallath, Pope John Paul II and the Catholic Church in India, 211.

of common concern and of a supra-ritual character. We indicate succinctly some instances of "a national and supra-ritual character" for the common action of the different Churches in any country or region:

- 1. Fostering communion and concord among the bishops: such assemblies allow for free discussion and smooth resolution of inter-Church problems in a spirit of evangelical charity and Christian equity, as well as mutual recognition and respect of the individuality, identity and spiritual heritage of each Church.
- 2. Matters concerning Catholic doctrine and morals: all the Catholic Churches have the same faith and morals, and therefore they can cooperate for unleashing a "civilization of love" for forestalling and countering the emergence of a rampant "culture of death" which manifests itself in various forms such as contraceptive mentality, hedonism, sexual promiscuity, abortion, euthanasia, etc. The inter-Church assembly is helpful to preserve and promote the same sense of faith amidst the varieties of doctrinal enunciations in the various Churches or cultures, so that the integrity and unity of faith suffer no harm (cf. c. 604).
- Common strategy for promoting the values of family, the basic cell of society and the sanctuary of life and love.
- Collective endeavors to spur up a Christian humanism which places man, a microcosm of the world and an icon of God, at the centre of all economic, political and cultural activity.
- Common witness in the face of growing secularism, religious apathy and anti-Christian propaganda of religious fundamentalists and materialistic atheistic groups.
- 3. Ecumenism: the long desired rapprochement and unity of all Christians is the common concern of all and hence concerted common effort of all Churches is highly auspicious.
- 4. Means of social communication: the proper use of the modern means of social communication (press, radio, cinema, television) is highly important for the evangelization and apostolate of the Church in a country.
- 5. Relationship with civil government and other national and international organizations: consensus and

harmony among the hierarchs of different Churches sui iuris are absolutely necessary for negotiating with civil governments and other groups for the furtherance of the common good of the Catholic Church in a country.

- 6. Social, educational as well as charitable activities like the establishment and management of Catholic schools, colleges, universities, hospitals, etc.
- 7. Formulation of a common strategy of different Churches *sui iuris* of the Catholic communion regarding particular political and socio-economic problems facing each country or region.
- 8. Common policy regarding interreligious dialogue and fostering good relationship with non-Christian religions.
- 9. Protection of the general discipline of the clergy in the socio-cultural background and particular circumstances of each country.
- 10. Moreover, the assemblies of hierarchs of several Churches *sui iuris* can consider all matters that the common law explicitly indicates like the common commission of experts on ecumenism (c. 904 § 2), common catechetical commission (c. 622), common tribunal (c. 1068) and common programme for priestly formation (c. 330 §§ 1 & 3).³²

4. Membership in the Assembly of Hierarchs of Several Churches *sui iuris*

With regard to membership in the assembly of hierarchs of several Churches sui iuris, canon 322 § 2 stipulates that "periodic assemblies are to be held of patriarchs, metropolitans of metropolitan Churches sui iuris, eparchial bishops, and, if the statutes state so, other local hierarchs of various Churches sui iuris, even of the Latin Church, exercising their authority in the same nation or region". The common law determines the minimum concerning membership and leaves the rest to the statutes of each inter-Church assembly.

³² For details see heading n. 2.3 in this chapter.

4.1. Membership according to Common Law

- 1. Heads of Churches *sui iuris*: patriarchs, major archbishops, metropolitans of metropolitan Churches *sui iuris* exercising their ministry in the same nation or region. The heads of Churches *sui iuris* are primarily responsible for fostering unity and harmony among the bishops and clergy of their Churches.
- 2. Eparchial bishops of various Churches *sui iuris* who are exercising their ministry in the same nation or region: an eparchial bishop is the one to whom an eparchy has been entrusted to be pastored in his own name with proper, ordinary and immediate power (cf. cc. 178-179). Eparchial bishops are heads of Christian communities, and as such they have a special right to participate in the assembly.
- 3. Diocesan bishops of the Latin Church (etiam Ecclesiae latinae) who exercise their ministry in the same nation or region; since the canons of the Eastern Code "concern all and only the Eastern Catholic Churches, unless, with regard to relations with the Latin Church, it is expressly laid down otherwise" (c. 1)33 canon 322 § 1 categorically mentions "even of the Latin Church". Though the Latin Code is silent about inter-Church assemblies, the Latin bishops are also bound to participate in inter-Church assemblies not only because the inter-Church laws are common for all the Churches of the Catholic communion, but also because both Codes receive their juridical vigour from same supreme authority. In fact in all the already-existing inter-Church assemblies (Egypt, Iraq, India, Lebanon, Syria and the Holy Land) bishops of the Latin Church are also members. It is interesting to note that the Latin patriarch of Jerusalem is the president of the assembly of hierarchs of the Holy Land, constituted according to the norms of the Eastern Code. Therefore, there is no doubt regarding this point.

³³ In the Eastern Code the Latin Church is explicitly mentioned 7 times: canons 41, 916 § 5, 207, 432, 830 § 1 & 1465.

4.2. Membership Left to the Statutes of Each Assembly by Common Law

In addition to the members determined by the common law, each inter-Church assembly can establish regulations concerning the participation of other members taking into consideration the circumstance and conditions of each nation or region. If the statutes so state, the following are also members of the assembly:

- 1. "Other local hierarchs" of various Churches *sui iuris* (obviously including those of the Latin Church) who are exercising their ministry in the same region or territory: hence exarchs, apostolic administrators, the administrators of vacant eparchies and exarchies, protosyncelli and syncelli, etc. are members (c. 984).
- 2. Non-Catholic hierarchs: canon 322 § 4 stipulates that every assembly in its statutes has to foster "as far as possible the participation of the hierarchs of those Churches which are vet in full communion with the Catholic Church". During the *iter* of the canon, one consultor pointed out that non-Catholic hierarchs may be admitted to the assembly only as observers because in many regions the Catholics are only a small minority, and the presence of non Catholics with equal rights would be neither auspicious nor beneficial.³⁴ Since the matter is left to the statutes approved by the Apostolic See. provisions can be made for the participation of the non-Catholics taking into consideration the peculiar circumstances of each place. Anyhow, non-Catholic patriarchs or other heads of autocephalous Churches as well as some representatives of non-Catholic hierarchs (if they are numerous) may be invited to the assembly of hierarchs at least as mere observers. Since the assembly is dealing only with matters of common interest. many grounds of collaboration can be detected even with the non-Catholics like social justice, relationship with the civil government, promotion of human dignity, socio-cultural life, interreligious dialogue, communication media, etc. 35

³⁴ Nuntia 28 (1989) 58.

³⁵ For details concerning ecumenical cooperation, see Pontificium Consilium ad Christianorum unitatem Fovendam, Directory for the Application of Principles and Norms on Ecumenism, nn. 161-218.

4.3. Other Members according to the Already Existing Statutes

The statues of the already-existing assemblies of hierarchs of several Churches *sui iuris* establish the participation of other members in the assembly.

- 1. Titular bishops: according to the statutes of the inter-Church assembly of India, co-adjutor bishops, auxiliary bishops and other titular bishops performing a special work in India entrusted to them by the Apostolic See or by the conference are members of the assembly. Retired bishops and other titular bishops residing in India are considered honorary members.³⁶ The statutes of the assemblies of hierarchs of Egypt, Lebanon, Syria and the Holy Land also stipulate that coadjutor bishops, auxiliary bishops and other titular bishops who are exercising a ministry within the territory are members of the assembly.³⁷
- 2. The papal legate: though he is not a member of the assembly can be invited to attend at least the first session of the assembly.³⁸
- 3. Religious: religious are not members of the assembly, but can be invited as guests. According to the statutes of the CBCI the presidents of the three conferences of religious in India (CRI priests, sisters and brothers) and the national secretary of CRI shall be invited to attend all meetings.³⁹ Similar arrangements are made for the participation of the representatives of religious in the statutes of the inter-Church assemblies of Egypt and Lebanon.⁴⁰

³⁶ CBCI, Statutes, Art. 11.

³⁷ Egypte - Statuts, Art. 1; Lebanon - Textes Statutaires, Art. 3; Syrie - Statuts, Art. 2; Terre Sainte - Statuts, Art. 3. In addition, in the Assemblée des ordinaires catholiques de Terre Sainte "Le custode de Terre Sainte" is also a member.

³⁸ Cf. CBCI, Statutes, Art. 17; Lebanon - Textes Statutaires, Art. 3; Syrie - Statuts, Art. 8.

³⁹ CBCI, Statutes, Art. 18.

⁴⁰ Cf. Egypte - Statuts, Art. 6 and Lebanon - Textes Statutaires, Art. 3.

5. The Juridical Binding Force of Decisions: Basic Principles

The prime purpose of inter-Church assemblies is to foster collaboration and cooperation among the hierarchs of different Churches exercising their ministry in the same nation or region for the common good of the entire Church and not to impose a super-synodal or super-conferential structure which jeopardizes the juridical autonomy and spiritual heritage of each Church *sui iuris*. Therefore the Code establishes very rigorous and well-determined conditions for enacting juridically-binding decision in such assemblies. Canon 322 § 2 states:

The decisions of this assembly do not have juridically binding force unless they deal with matters which cannot be prejudicial to the rite of each Church *sui iuris* or to the power of the patriarchs, of synods, of metropolitans and of the councils of hierarchs; they have besides to have been passed at least by two-thirds of the members having a deliberative vote, and finally approved by the Apostolic See.

5.1. Protection of the Rite of Each Church Sui Iuris

The decisions of the inter-Church assembly cannot be prejudicial to the rite of any of the Churches *sui iuris* which participate in the assembly. Canon 28 § 1 describes rite as a heritage made up of liturgy, theology, spirituality, and discipline, a heritage that is differentiated by the culture and the circumstances of the history of the peoples and which is expressed by each Church *sui iuris* in its own manner of living the faith. Hence the inter-Church assembly cannot make decisions which are detrimental to the liturgical, theological, spiritual and disciplinary heritage of any Church *sui iuris* of the nation or region.

This canon is congruent with the solemn magisterium and official policy of the Catholic Church regarding the preservation of the rite or the spiritual heritage of each Church as the common patrimony of the universal Church. Thus the decree of the Second Vatican Council on the Eastern Catholic Churches solemnly proclaims:

All Eastern Christians should know and be certain that they may and should always preserve their own lawful liturgical rites and way of life, and that changes should be made only by reason of their proper and organic development. All these things are to be observed with the greatest fidelity by the Eastern Christians themselves. They should indeed, from day to day acquire greater knowledge of these matters and more perfect practice of them and if for reasons of circumstances, times or persons they have fallen unduly short of this they are to strive to return to their age-old traditions. Those persons, however, who by reason of their office or of an apostolic ministry have frequent contact with the Eastern Churches or their faithful are to be carefully instructed in the knowledge and practice of the rites, law, teaching, history and nature of Eastern Christians, in keeping with the importance of the office they hold [...] (OE 6).

The new Eastern Code dedicated an entire chapter to "The Preservation of Rites" (cc. 39-41). Canon 39 stabilizes that "The rites of the Eastern Churches are to be preserved and promoted conscientiously as the heritage of the whole Church of Christ, a heritage in which shines forth the tradition coming down from the Apostles through the Fathers, and which in its variety affirms the divine unity of the Catholic Faith".

Since the rites of the Eastern Churches are the heritage of the whole Church of Christ and since they are the sources of Apostolic tradition, the Code imposes a grave obligation on hierarchs who preside over Churches *sui iuris*, namely patriarchs, major archbishops, metropolitans, as well as other hierarchs like eparchial bishops, exarchs, the apostolic administrators, protosyncelli and syncelli, the major superiors of institutes of consecrated life who have ordinary power of governance, etc., to take earnest care to guard faithfully and observe exactly their own rite (c. 40 § 1). A similar obligation is incumbent upon other clerics and members of institutes of consecrated life and other Christian faithful (c. 40 §§ 2-3).41

⁴¹ P. PALLATH, "The Obligations of All Christian Faithful Regarding the Preservation of the Patrimony of Their Church", Christian Orient (June 1992)112-122.

Even the heads of Churches *sui iuris*, specifically patriarchs, major archbishops or metropolitans, as well as the episcopal bodies of Churches *sui iuris* like synods and the councils of hierarchs are incompetent to introduce changes into their rite except by reason of their proper and organic development (OE 6; CCEO c. 40 § 1). The incompetence of the inter-Church assembly to make decisions prejudicial to the rite of each Church *sui iuris* is to be understood in this background. If such an assembly makes a decision which hampers or disfigures any way the rite of any Church *sui iuris*, the decision would be null and void.

It is interesting to note that the canons of the Eastern Code regarding the preservation of rite (cc. 39-41) do not find any equivalent in the Latin Code (CIC 1983). History proves that the Christian faithful of the Latin Church always preserved their spiritual heritage with scrupulous fidelity and observed their rite with ardent devotion so that any legal precept in this regard has become superfluous. The Ordinaries of the Latin Church never attempted to orientalize their Church.

On the other hand, the missionaries of the Latin Church and some Eastern hierarchs and members of institutes of consecrated life latinized or westernized those fractions of the Eastern Catholic Churches that came into full communion with the Catholic Church to such an extent that some of them have even become obstacles to the long-desired rapprochement and unity of Christ's entire Church. Notwithstanding the solemn proclamations of Vatican II, the legal precepts of the Eastern Code as well as the repeated admonitions of the Petrine See, some hierarchs of certain Eastern Churches find it difficult to shrink from their neo-colonialist inborn westernization tendency. That is why the magisterium and the law of the Catholic Church explicitly admonish the Eastern Christians to preserve their spiritual heritage and observe their rites. Though not stipulated in the Code, the hierarchs and the Christian faithful of the Latin Church, just as the Easterners, have the right and obligation to preserve their own rite, and hence the decisions of the inter-Church assemblies cannot be detrimental to the Latin rite.42

⁴² Regarding the obligation of the Latin Ordinaries to preserve their rite, see CONGREGATION FOR DIVINE WORSHIP AND THE

5.2. Protection of the Autonomy of Each Church Sui Iuris

Secondly the decisions of inter-Church assemblies cannot be prejudicial to the power of the patriarchs, synods, metropolitans and councils of hierarchs. Autonomy or selfgovernment is considered by Vatican II as very important for the protection and growth of different Churches because it enables each Church to govern itself according to its own traditions which are perhaps alien to the outsiders. That is why, after speaking about the patrimony of the Eastern Churches as belonging to the patrimony of the universal Church. the Council declared that "the Churches of the East like those of the West have the right and duty to govern themselves according to their own special disciplines. For these are guaranteed by ancient tradition, and seem to be better suited to the customs of their faithful and to the good of their souls".43 Orientalium Ecclesiarum number 9 is the most fundamental assertion of the autonomy of the Eastern Churches:

The patriarchs with their synods are the highest authority for all business of the patriarchate, not exceeding the right of setting up new eparchies and appointing bishops of their rite within the patriarchal territory, without prejudice to the inalienable right of the Roman Pontiff to intervene in any particular case.

According to the declaration of the Council, each Church sui iuris in its hierarchical constitution, regime and discipline does not depend up on any other Church sui iuris regardless of size or historical derivation. The highest grade of such autonomy is verified in the patriarchal and major archiepiscopal Churches: the patriarch or major archiebishop with the synod has even the right to set up new eparchies and nominate bishops within the territorial boundaries of the same Church. However the pope has the inalienable right to intervene and can always intervene if it is useful for the good of the Church, especially for safeguarding faith and morals, and proper canonical and liturgical discipline. The inter-Church assembly

DISCIPLINE OF THE SACRAMENTS, The Roman Liturgy and Inculturation, Rome 1994.

⁴³ Orientalium Ecclesiarum, n. 5; cf. Unitatis redintegratio, n. 16.

cannot endanger the autonomy of the Eastern Churches guaranteed by Vatican II and further regulated by CCEO.

- 1. The decisions of the inter-Church assembly cannot be prejudicial to the power of the patriarchs or major archbishops. The patriarch or major archbishop who presides over his respective Church as its father and head (c. 55) has power over all the bishops including metropolitans and other Christian faithful of the Church over which he presides (c. 56). The patriarch or major archbishop either by himself or with the consent of the synod of bishops, or with the consent or counsel of the permanent synod, enjoys major administrative powers in the whole Church over which he presides; such as the establishment of provinces and eparchies, modification of their boundaries, unification, division, suppression, or modification of their hierarchical structure, etc.⁴⁴
- •2. The decisions of the inter-Church assembly cannot be prejudicial to the power of the synod of bishops of a patriarchal or major archiepiscopal Church. The synod of bishops is exclusively competent to enact laws for the entire Church, and it conducts the election of the patriarch or major archbishop and bishops; it also acts as the superior tribunal of the same Church which judges up to the final sentence without any further appeal, with the exception of cases reserved to the Roman Pontiff or the Apostolic See (c. 110).⁴⁵
- 3. If there are metropolitan Churches *sui iuris* within the territory of the inter-Church assembly, its decisions cannot be prejudicial to the power of the metropolitans who preside over such Churches and the councils of hierarchs which assist the metropolitans in Church governance.
- 4. The canon makes many precautions to protect the autonomy of the Eastern Catholic Churches because they are small minority groups in many countries where the vast majority are Catholics of the Latin Church. Therefore the canon does not mention the bishops' conference of the Latin Church whose very limited autonomy is not in peril.

⁴⁴ For the great privileges and prerogatives of patriarchs and major archbishops, see CCEO cc. 78-101.

⁴⁵ For the major powers, rights and obligations of the synod of bishops in detail, see chapters 2, 3 & 4.

5. 3. The Requirement of a Special Majority

In addition to the conditions mentioned above, the decisions of an inter-Church assembly has juridically binding force only if they have been passed at least by two-thirds of the members having deliberative vote. In the synod of bishops, decisions are generally taken on the basis of majority vote, provided an absolute majority of the members are present. However, the Code establishes a special quorum, namely two-thirds of the bishops who are obliged to attend the synod, not counting those who are legitimately impeded, only for the election of patriarchs and bishops (cc. 69 & 183). Provided the required quorum is fulfilled, according to common law the one who has obtained two-thirds of the votes is elected patriarch, but for the election of a bishop an absolute majority of the votes of those present is enough (c. 183 § 3).

In an assembly of the hierarchs of different Churches sui iuris, a very special kind of majority is established by the Code: the decisions can obtain juridically binding force only of they have been passed at least by two-thirds of the members having deliberative vote. The majority is not determined by the fully competent members present, but by the number of those members who enjoy the vote. Therefore, the potential votes of those who are absent, of abstaining members as well as invalid votes are automatically counted as opposing a proposal. The requirement of such a high majority impedes a Church with a large number of members in the assembly from making decisions without the collaboration and concord of other Churches. In the Latin Code such a high majority is prescribed only for the promulgation of general decrees by the bishops' conference (c. 455 § 2) in order to protect the autonomy of the diocesan bishops.

5.4. Approval of the Apostolic See

Decisions made in harmony with the three conditions already indicated have no binding force unless "approved by the Apostolic See". Part three of the same canon further establishes that "a decision, even if passed by a unanimous vote, which in any way whatever exceeds the competence of this assembly, is devoid of all force until it is approved by the Roman Pontiff in person". In fact, §2 speaks in a general way

of all decisions of the assembly which fall within its delimited competence, whereas § 3 indicates the procedure for the approval of a decision which exceeds the competence of the assembly delineated by common law. In the first case (decisions within the competence) the approval of the Apostolic See, namely that of the competent dicastery of the Roman Curia, suffices; whereas a decision which exceeds the competence should be approved by the "Roman Pontiff in person". If the assembly consists only of different Eastern Churches the Congregation for the Oriental Churches gives the approval, but if the Latin Church is also involved it seems that the decisions may be approved both by the Congregation for the Propagation of the Faith (in mission countries) or the Congregation for the Bishops (in other Latin countries).

The Bishop of Rome, as the moderator of the Catholic communion, is the supreme judge and impartial arbiter in inter-Church matters. 46 The provision for the approval of the Apostolic See stipulated in the canon enables the Bishop of Rome to verify whether the decisions are congruent with the common law of the Catholic Church and most especially whether there is anything prejudicial to the rite of each Church sui iuris or to the power of the patriarchs, synods, metropolitans and councils of hierarchs. If there is anything contrary to the common law, the Apostolic See may make modifications or admonish the same assembly to amend the decisions according to its directives. The requirement for the approval by the Apostolic See is certainly a safeguard for the rights of minority groups in the assembly.

6. The Statutes of the Assembly (c. 322 § 4)

The inter-Church assembly according to the Code is not simply a periodic gathering of hierarchs, but a permanent institution having juridical personality according to the norms of canons 920-930. The common Code in a single canon provides only the general orientations and basic principles

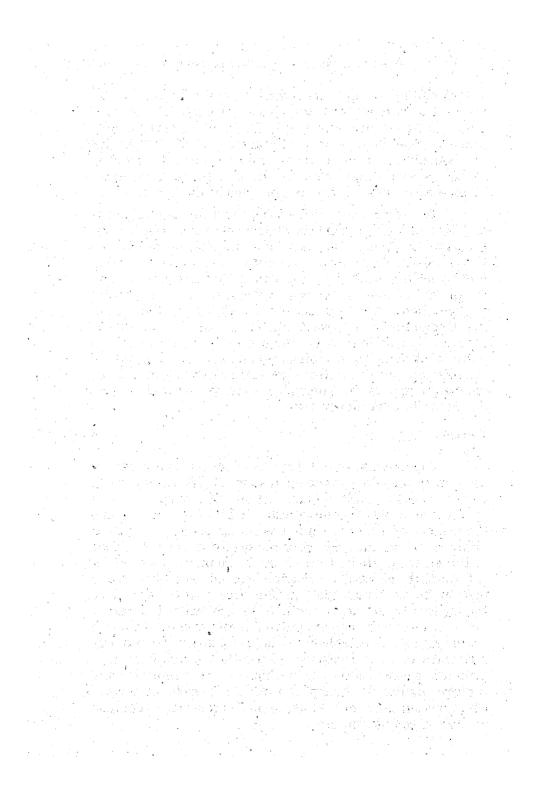
⁴⁶ Unitatis Redintegratio, n. 14; Orinetalium Ecclesiarum, n. 4 & Nuntia 28 (1989) 57.

regarding the assembly of hierarchs of several Churches *sui iuris*. It is up to the statutes of each assembly to determine more precisely the nature, specific purpose, membership, competence and functioning of the assembly (cf. c. 923) taking into consideration the socio-cultural and political context as well as special circumstances of each place. The statutes, drawn up by the assembly, have to be approved by the Apostolic See.

The statutes can determine, above all, the frequency of the assembly; the authority who convokes and presides over the assembly; the participation of local hierarchs other than those determined by the common law, like exarchs, protosyncelli, syncelli etc.; the participation of titular bishops; the participation of experts and guests; as well as the participation of the hierarchs of those Churches who are not in full communion with the Catholic Church. The statutes of the already-existing inter-Church assemblies provide for a permanent council or standing committee, different episcopal commissions and committees, general secretariat, etc., which enable the regular pursuing of the programmes and projects for inter-Church collaboration.

Conclusion

The assemblies of hierarchs of several Churches sui iuris can be considered as an innovation of CCEO, necessitated by the reality of multiple jurisdiction. The purpose of this institute is to foster collaboration and coordination among the bishops of different Churches sui iuris, exercising their ministry in the same nation or region, for the common good of the entire Catholic Church in the country. In order to safeguard the power of the patriarchs, major archbishops and metropolitans (of metropolitan Churches sui iuris) as well as the legitimate autonomy of synods and councils of hierarchs and to preserve the rite or spiritual heritage of each Church sui iuris, the Code establishes rigorous conditions for enacting juridically-binding decisions. Hence the assembly remains primarily a consultative organ which fosters communion and concord among the heads and other hierarchs of several Churches sui iuris, and which promotes concerted action on matters of common interest.



LOCAL EPISCOPAL BODIES - A CRITICAL APPRAISAL AND GENERAL CONCLUSION

The Acts of the Apostles witness that the apostles under the leadership of Peter acted as a college from the very inception of the Church to counter the difficulties and challenges facing the early Church. Inspired by the biblical ideas of communion and collegiality and animated by the apostolic tradition and primordial apostolic praxis, the bishops of each local Church having a homogeneous socio-cultural background and political circumscription used to assemble in synods or councils both in the East and in the West. Such assemblies were normally held at the center of the locality or metropolis and were presided over by the metropolitan or another bishop of great fame and sanctity. Thus even before the Council of Nicaea, the metropolitan system and provincial synods emerged spontaneously. The Council of Nicaea and the subsequent ecumenical councils officially recognized the metropolitan system and the synodal governance of the local Churches.

In the first chapter, entitled "Local Episcopal Bodies according to the Common Tradition of the Church", we explored the genesis and gradual evolution of synods and councils in the first millennium on the basis of the first seven ecumenical councils and some generally accepted local synods. Our analysis demonstrated that in the early Church local provincial synods enjoyed vast powers like the enactment of laws for the province; the election and consecration of bishops; the adjudication of criminal and contentious cases of bishops; as well as the final decision on appeals from lower tribunals.

In the same chapter we traced the development of the patriarchal synods of the East and the plenary councils of the West. As we have accentuated, certain sees, important because of their apostolic origin, their preeminent position as mother Churches due to the dissemination of the Gospel in other nations, the fame and sanctity of their bishops, favorable geographical situation, political and cultural importance as well as flourishing ecclesial life gradually emerged as patriarchates; and the episcopal bodies of these

Churches were called patriarchal synods. The Council of Nicaea (325) recognized the super-metropolitan prerogatives of Rome, Alexandria and Antioch. The First Council of Constantinople (381) confirmed the prerogatives of these great sees and attributed the second position of honor to Constantinople. With the Council of Chalcedon (451) the prerogatives of these great sees were definitively fixed and Jerusalem emerged as the fifth patriarchate. Outside the Roman Empire the Chaldean Church and the Armenian Church emerged as catholicates or patriarchates. The patriarchal synods enjoyed wide legislative, judicial, electoral and administrative powers over the entire patriarchal Church.

The Western Church remained as a single patriarchate. In the ancient Latin Church, though there were some synods of a patriarchal character, they gradually gave way to regional or national plenary councils. Such councils enjoyed sufficient autonomy, settled doctrinal and disciplinary disputes and promulgated laws in harmony with the decrees of the ecumenical councils for safeguarding the unity and communion of the Churches within the same region or nation.

The first part of the book dealt in two sections with the local episcopal bodies of the East. In the first section entitled "The Synod of Bishops of Catholic Eastern Churches" we exposed in a comprehensive manner (chapters 2-4) the nature, structure, major powers as well as the rights and obligations of the synod of bishops of the patriarchal and major archiepiscopal Churches. In the second section of part one we treated the council of hierarchs of metropolitan Churches sui iuris (chapter 5) and the assemblies of hierarchs of patriarchal. major archiepiscopal and metropolitan Churches (chapter 6). The second part of the book (chapters 7-9) is entirely devoted to the local episcopal bodies of the West. In part three, entitled the "Encounter between the East and the West", we examined the differences and similarities between the synod of the Eastern Churches and the bishops' conference of the Latin Church (chapter 10). Finally, we evaluated the nature, purpose, composition and competence of the assemblies of hierarchs of several Churches sui iuris (chapter 11).

1. The Synod of Bishops

The synodal and patriarchal institutions in the Eastern Churches were regulated for the first time in a common Eastern law by the motu proprio Cleri Sanctitati promulgated in 1957 by Pope Pious XII. However, CS was a by-product and offshoot of the monarchic ecclesiology of the West that culminated in Vatican I and was incarnated in the 1917 Code of Canon Law, forming the new concept of the patriarch and patriarchal privileges that emerged in the second millennium. According to CS the patriarch elect had to receive confirmation from the Roman Pontiff; both the patriarch elect and the synod were bound to ask for ecclesiastical communion and the pallium. Before the reception of confirmation and the pallium, the patriarch could not have convoked the synod and ordained bishops. Similarly, according to the normal procedure of CS the synodal election of bishops also required confirmation from Rome. Laws made by the synods could not be promulgated before obtaining confirmation. The judicial and administrative powers of the synod were also considerably limited. Further, the principle of absolute territoriality was observed in CS; and consequently the bishops constituted outside the territory were not members of the synod, and the patriarch or the synod had practically no power over the faithful residing outside the traditional territory.

The new Eastern Code was formulated on the basis of the ecclesiology of communion and the principle of episcopal collegiality rehabilitated by Vatican II, and to a certain extent in harmony with the genuine traditions of the Eastern Churches. According to the new Code the synod of bishops can almost freely elect the bishops of the same Church within the territory. The election of bishops has two steps: the preparation of the list of worthy candidates and the real election of a bishop. The synod of bishops of a Church prepares the list of worthy candidates and forwards it to the Apostolic See for the assent of the Roman Pontiff. The Roman Pontiff ascertains the suitability of the candidates for the episcopal office and grants his assent to the list prepared by the synod. When an eparchy becomes vacant or a new one is erected, the synod of bishops is free to elect anybody from the list, for

which the Roman Pontiff has already given his *nihil obstat* or assent. However if the synod elects somebody who is not on the list of candidates, then the assent of the Roman Pontiff is required after the election (c. 185). The synod of bishops can use its freedom to elect the bishops in a meaningful way by including in the list all the candidates of a Church *sui iuris* worthy of the episcopacy.

The synodal election of the patriarch appears to be free, requiring no confirmation from the Roman Pontiff as stipulated in CS. The patriarch, through synodal election and enthronement, obtains his office with full effects of law. But he cannot convoke the synod or ordain bishops until he receives ecclesiastical communion, as in CS where confirmation was necessary. Since bishops who are already in ecclesiastical and hierarchical communion with the Roman Pontiff are elected patriarchs in Catholic Eastern Churches, according to the ancient tradition, the patriarch may be obliged to renew communion with the Roman Pontiff but without restricting his powers that belong essentially to his office. The synod of bishops of a major archiepiscopal Church can elect the major archiebshop; however, the election has to be confirmed by the Roman Pontiff.

The synod of bishops is free to enact laws that are not contrary to the laws of the universal Church and the common law of the Eastern Churches. Ample scope is left for *ius particulare* in CCEO, so much so that each Church *sui iuris* can make a supplementary particular Code in accordance with its own authentic traditions and canonical heritage. The laws and decisions of the synod in general need no approval, confirmation or review by the Apostolic See as required by CS. Though confirmation is avoided in a general way, in some important decisions the synod or its head, the patriarch, needs prior consultation or subsequent confirmation from the Roman Pontiff or the Apostolic See.

The synod of bishops, which acts as the superior tribunal of a patriarchal or major archiepiscopal Church, together with the synodal tribunal of three elected bishops, the ordinary tribunal of the proper Church and other lower tribunals forms a perfect judiciary system within the territory of the same Church which judges in all the instances up to the final

sentence with the exception of some cases reserved to the Roman Pontiff or the Apostolic See by the common Code.

In CS the bishops of a patriarchal or major archiepiscopal Church constituted outside the delimited territory were not members of the synod and did not enjoy any synodal rights or obligations. Though the new Code strives to improve the relationship between the faithful and bishops located outside the territory and the mother Church, the synod of bishops and the patriarch or major archbishop have no effective power over them. All the major powers of the synod are limited by territoriality. Laws, except liturgical ones, made by the synod and promulgated by the patriarch have legal force only within the delimited territory. Judicial competence is also limited by territoriality, so that appeals from eparchies and metropolitans outside the territory are to be made directly to Rome, just as in the Latin Church, and not to the synod of Similarly, the patriarch or synod has no bishops. administrative and electoral powers outside the territory.

It seems to be an anomaly of the new Code that the bishops of the same Church constituted outside the territory are equally members of the synod and have deliberative vote as all other bishops in all affairs of the Church according to ius commune. (unless their votes are restricted except in cases of election of patriarchs, bishops and candidates for episcopacy outside the territory), yet they are not obliged by the laws and decisions made by them. The bishops outside the territory also have deliberative vote in a synod that judges a case in its capacity as the superior tribunal of the same Church, but the same synod cannot judge these bishops and has no judicial power over them.

The bishops of a Church outside the territory are directly appointed by the Roman Pontiff, and they directly depend upon him. They are not responsible to the patriarch or to the synod of bishops. They send the official quinquennial report of their dioceses directly to the Apostolic See and not to the patriarch or to the synod of bishops; only a copy of the report is to be sent to the patriarch as soon as possible (c. 206 §2). The eparchial bishops constituted outside the territory are required to make *ad limina* visits every five years just like the bishops of the Latin Church; the law stipulates only

that it is desirable that at least sometimes it be done with the patriarch (c. 208 \S 2). In the case of resignation, such bishops send their resignation letters to the Roman Pontiff and not to the patriarch or synod of bishops (c. 210 \S 2).

With regard to the nomination of bishops and the judiciary system outside the territory of a patriarchal or major archiepiscopal Church, the Eastern Code is not applicable and practically the Latin system is followed. In the eparchies outside the territory the tribunals of the Apostolic See, namely the Apostolic Penitentiary, the Roman Rota and the Supreme Tribunal of the Apostolic Signatura, are as much competent as in the Latin Church

It seems that the basic division of the patriarchal and major archiepiscopal Churches into intraterritorial and extraterritorial regions and the placing of the Christian faithful under divided loyalties or a double regime with corresponding canonical norms weaken considerably the unity and communion of these Churches and imperil the growth and organic progress decreed by Vatican II. Only if the bishops and the faithful outside the territory are properly coalesced and integrated with the mother Church, and not treated as parallel hierarchies, can the proper growth of Eastern Churches be ensured. The bishops and faithful of a Church sui iuris outside or inside the territory are equally members of the same Church, and it is not proper to detach them from their mater (Church) and pater et caput (patriarch or major archbishop) by obligatory canonical precepts and to treat them as appendixes. Therefore, it would be necessary for the unity, harmony, integrity, as well as the proper growth and blossoming of Eastern Churches to find a just solution to the problem of territoriality that ensures equal treatment of all the Christian faithful of a Church sui iuris. In order to disentangle the new Code from the anomalies already enumerated, the following provisions may be seriously considered:

1. Laws and decisions enacted by the synod and promulgated by the patriarch shall have obligatory force in all the eparchies of the same Church inside and outside its delimited territorial boundaries. An eparchial bishop constituted outside the territory, who judges a given law not to be fruitfully applicable in his eparchy because of extra-

ordinary special circumstances, shall reveal his reasons to the synod of bishops to obtain exemption from this particular law. After evaluating objectively the position of the said bishop, the synod may make a final decision considering only the common good of the Church.

- 2. Just as with the bishops inside the territory, the contentious cases of eparchies and bishops outside the territory of the same Church shall be adjudicated by the synodal tribunal of three bishops (cf. c. 1062 § 3). Similarly, appeals from bishops and metropolitans outside the territory of the same Church are to be made to the synod of bishops. In other words, the synod of bishops should become the superior tribunal for all the juridical persons and Christian faithful of the same Church even if located outside its territorial boundaries, with the exception of those special cases reserved to the Roman Pontiff (c. 1060).
- 3. The bishops and metropolitans of eparchies and provinces of the same Church erected by the Roman Pontiff outside the territory may be elected by the synod of bishops according to the normal procedure of election. Naturally the official quinquennial report of their eparchies and the resignation letters of bishops are to be sent to the patriarch or to the synod of bishops.

2. The Council of Hierarchs

In the fifth chapter we strove to understand the juridical status of metropolitan Churches sui iuris and their episcopal body, the council of hierarchs. We demonstrated that though the metropolitan Churches sui iuris are presented in the Eastern Code as a creation ex nihilo, they are the most antique and primitive form of Church organization, regulated by the "sacred canons". The juridical figure of the metropolitan and the powers and functions of the metropolitan synod emerge clearly from the canons of the first ecumenical councils and generally accepted local synods (see first chapter). In fact, even the great patriarchates once existed as metropolitan Churches sui iuris. Notwithstanding these facts, in the new Eastern Code, for the internal governance of metropolitan Churches sui iuris, a council of hierarchs, analogous to the bishops' conference of the Latin Church, is instituted in the

place of a metropolitan synod. Consequently the powers and functions of the council of hierarchs are also circumscribed in the manner of the bishops' conference.

The council of hierarchs can make laws and decisions only on those matters expressly indicated in the canons of the common Code which treat the competence of the council as well as in those cases in which common law remits the matter to the particular law of a Church sui iuris. The laws and decisions of the council are to be "received" by the Holy See before promulgation. The metropolitan himself and the bishops of the metropolitan Churches sui iuris are appointed by the Roman Pontiff. The metropolitan can constitute a metropolitan tribunal, as in the province of a patriarchal of major archiepiscopal Church, which acts both as the tribunal of the eparchy of the metropolitan and as the appellate tribunal for the cases adjudged in the eparchial tribunals of the metropolitan Church. The tribunal of third instance is the Apostolic See. Hence the council of hierarchs of a metropolitan Church sui iuris has legislative power in a restricted manner, yet it has no special judicial and electoral powers.

As we have noted elsewhere, according to the new Eastern Code there are four kinds or grades of Eastern Churches: other Churches sui iuris, metropolitan Churches, major archiepiscopal Churches and patriarchal Churches. These are in fact different stages of the growth of a Church towards maturation and perfection. Hence an other Church sui iuris can be elevated to the status of a metropolitan Church, a metropolitan Church to that of major archiepiscopal Church and so on, considering a Church's organic growth and maturity. Such reorganization and reconstitution will be an imperative if the long-desired ecumenism will become a reality.

3. Patriarchal, Major Archiepiscopal and Metropolitan Assemblies

An analysis of the nature, structure and competence of the patriarchal or major archiepiscopal assembly is undertaken in the sixth chapter. With regard to such an assembly there is no difference between patriarchal and major archiepiscopal Churches. The metropolitan assembly (sui iuris) also functions in the manner of the patriarchal assembly.

The patriarchal, major archiepiscopal and metropolitan (sui iuris) assemblies are an innovation of the new Eastern Code in order to assure the participation of priests, religious and other Christian faithful in the governance and ministry of the Church according to each one's condition and function Such assemblies are consultative bodies which assist the patriarch or major archbishop and the synod (metropolitan and council of hierarchs in metropolitan Churches sui iuris) in the governance of the Church. The common assembly of different sections of the Christian faithful along with their bishops indubitably engenders fraternal communion and mutual agreement among the Christian faithful which enable them to forestall and surmount various hazards and obstacles created by an extremely secularized and desacralized modern world and ensure the full cooperation and collaboration of all for the organic growth and steadfast enhancement of their Church and its spiritual heritage.

4. Particular Councils and the Bishops' Conference of the Latin Church

In the second part of the book, devoted to the "Local Episcopal Bodies of the West", we delineated (in three chapters) the evolution, nature, structure, purpose and powers of particular councils and bishops' conferences of the Latin Church according to the Code of Canon Law. The first chapter of this book witnesses that just as in the East, provincial and plenary councils were celebrated also in the West in the first millennium. In fact, even the ecumenical councils of the second millennium did not fail to underscore the importance of particular councils in the life of the Church. But gradually with the emergence of the new ecclesiology of centralization and episcopal individualism in the Western Church, the horizontal collegial relationship of bishops faded into oblivion and the real synodal activity became a "relic" of history. Each bishop who directly depended upon the Holy See acted arbitrarily without consulting other bishops exercising their ministry in the same region or nation who have the same socio-cultural and political background.

The nineteenth century witnessed rapid changes in the socio-cultural economic life which resulted in the

separation of Church and state, the secularization of the state. the resurrection of the spirit of nationalism, etc. The diffusion of modern means of communication turned the world into a global village. All these necessitated common responses to problems and effective coordination of pastoral action at regional, national and even continental levels. Particular councils as they existed in canon law failed to meet the needs of the time. Therefore, for fostering coordination and collaboration among bishops and for programming common pastoral action, bishops' conferences sprang up spontaneously in different countries. The Second Vatican Council solemnly proclaimed the utility and necessity of the bishops' conferences and promulgated norms for their organization and functioning. The Code of Canon Law 1983 reiterated the norms of Vatican II with necessary modifications and improvements. The bishops' conference is still a developing institute whose theological foundations and juridical competencies are not vet finally determined.

Plenary councils according to the present law completely depend upon bishops' conferences for their existence and functioning. They are not permanent institutions; neither do they have statutes nor juridical personality. No fixed time is stipulated for their celebration. As a result they practically became extinct. Bishops' conferences have assumed and are gradually assuming the powers and competencies of the plenary councils of the first millennium. Therefore at present in the Latin Church the bishops' conference is the synodal or conciliar institution which is congruent with the synods or councils of the first millennium and analogous to the Eastern patriarchal synods, though their juridical powers and competencies are well determined and delimited.

According to the Code of Canon Law, plenary councils, if they are celebrated, have general competence to legislate whatever is necessary for the increase of faith and moral life, for the organization of common pastoral activity and for promoting or protecting common discipline, in harmony with the official magisterium and the universal law of the Church. According to the present law, bishops' conferences are primarily organs of consultation and coordination of pastoral action. However they enjoy legislative power in well-

determined cases under rigorous conditions. Neither particular councils nor the bishops' conference of the Latin Church have any electoral or judicial powers analogous to the synod of bishops of the Eastern patriarchal or major archiepiscopal Churches.

The results and observations of our rigorous research regarding the episcopal bodies of the West according to the Code of Canon Law can be summarized in the following manner:

- 1. Particular councils, especially plenary councils, practically became extinct in the West. They are not permanent institutions—they have no juridical personality, nor statutes, nor any fixed time for celebration.
- 2. Bishops' conferences originated as a substitute for plenary councils whose celebration became impossible because of the restrictions imposed by the central organ and because of the interference of civil authorities. This is also evident from the fact the Eastern Churches, which continue to celebrate the synods, have not felt the need of any new institution for Church-government. Had the councils functioned in the Western Church as before, the bishops' conferences would not have become necessary. Ever since their origin bishops' conferences have assumed and are gradually assuming the powers and functions which the plenary councils performed in the first millennium. Hence as practical experience witnesses, plenary councils are neither necessary nor an imperative for the governance of the Latin Church today. This is also evident from the fact that nothing is explicitly and exclusively reserved to the particular councils in the whole Latin Code
- 3. The bishops' conference is an evolving institute whose theological basis and juridical competencies are not yet finally determined.
- 4. In harmony with ancient conciliar tradition, only bishops (and those who are equivalent to them in law) are *de iure* members of the conference, while in particular councils representatives of clergy, religious and other Christian faithful participate, though with a consultative vote.

5. Evaluating the juridical status of bishops' conferences and plenary councils and considering the signs of the time. I am of the opinion that the nature, structure and competencies of the two institutions may be redefined and clarified. The bishops' conference, in which only the bishops participate. should become the real conciliar or synodal institution of the Latin Church, analogous to the synod of bishops of the patriarchal and major archiepiscopal Churches. Plenary councils, which are under the threat of extinction may be converted to a consultative body (to be convoked at least once every 5 years) in the manner of the patriarchal assembly of the Eastern Code. Such a plenary council would operate under the authority of the bishops' conference in which together with the bishops, representatives of priests, religious and lay people participate according to each one's condition and function. for effecting the local Church as a communion. The main task of this institution would be to give counsel and recommendations to the bishops' conference on important matters affecting the Church in a nation or territory. The bishops' conference should respect to the maximum the legitimate recommendations of this consultative body in its decision-making process, especially if they are congruent with the law and official magisterium of the Catholic Church.

5. The Encounter between the East and the West

In the third part of the book, "The Encounter between the East and the West", we sought to decipher the convergences and divergences between the synod of bishops of the Eastern Churches and the bishops' conference of the Latin Church (chapter 10). Our analysis brought to the fore that the primary purpose of the bishops' conference is to effect collaboration and coordination among the bishops of a nation or territory, though it has restricted legislative power under rigorous conditions and some minor administrative powers. On the other hand the synod of bishops enjoys wide legislative, electoral, judicial and administrative powers.

In part three we also addresed (chapter 11) the assembly of hierarchs of several Churches *sui iuris*, a new institute of the Eastern Code. We purposefully located this chapter in part three in order to demonstrate that the inter-

Church assembly is a common institution of the whole Catholic Church, necessitated by the reality of the Church as a communion of Churches, manifested at the local level where different jurisdictions coexist. Our analysis made clear that the Latin Church and the Eastern Churches participate in all the already-existing inter-Church assemblies. We also highlighted that the purpose of this assembly is to cultivate and nourish koinonial unity and mutual collaboration among the heads and other hierarchs of different Churches exercising their ministry in the same nation or region for the common good of the entire local Catholic Church.

Conclusion

The Catholic Church is a communion of different Eastern patriarchal Churches. archiepiscopal Churches and Metropolitan Churches sui iuris regulated by the Code of Canons of the Eastern Churches, and the Latin Church, a patriarchal Church sui generis ordered by the Code of Canon Law. The synod of bishops and the council of hierarchs undertake the internal governance of the patriarchal or major archiepiscopal Churches and metropolitan Churches sui iuris respectively. The patriarchal, major archiepiscopal and metropolitan assemblies are consultative bodies which assure the participation of priests. religious and other Christian faithful in the governance and the ministry of the Church in a representative manner according to each one's condition and function. Bishops' conferences and particular councils facilitate the internal governance of the Latin Church in each nation or territory. The assembly of hierarchs of several Churches sui iuris is destined to promote communion and collaboration of different Churches which coexist in the same nation or territory, but without contravening and infringing upon the autonomy of each Church as regards the internal governance.

The powers of the synod of bishops and its head, the patriarch or major archbishop, are considerably great if we compare them with the council of hierarchs of metropolitan Churches *sui iuris* and the bishops' conference of the Latin Church. The synod enjoys wide legislative, electoral, judicial as well as administrative powers, while the council and the

conference have no judicial and electoral powers; their administrative powers are also very limited.

The bishops' conference can make juridically-binding decisions under very rigorous conditions and only in those instances explicitly determined in the Code. Similarly the council can enact laws and decisions on those matters explicitly indicated in the canons which treat the competence of the council and in those cases in which the common law remits the matter to the particular law of a Church sui iuris. The juridically-binding laws of the conference are to be reviewed by the Apostolic See before promulgation. while all the decisions of the council are to be "received" by it. Neither the council nor conference constitutes at present an intermediary structure between the diocesan bishops and the supreme authority of the Church as does the synod of bishops headed by the patriarch or major archbishop. The different kinds of local episcopal bodies witness the wondrous unity and the profound communion of the Catholic Church in legitimate diversity and genuine multiplicity.

Our rigorous scientific investigation on the local episcopal bodies of the East and the West enables us to conclude that the synod of bishops of the patriarchal and major archiepiscopal Churches which is a natural evolution and a spontaneous outgrowth of the ancient synods, is the most authentic and comparatively more autonomous episcopal body of the entire Catholic Church.

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LOCAL EPISCOPAL BODIES IN EAST AND WEST

This book "is a clear and well-documented account of the historical roots as well as the structure and function of *Local Episcopal Bodies in East and West* that provides much useful historical and canonical information concerning all the local episcopal bodies that are enumerated in the *Codex Canonum Ecclesiarum Orientalium* and in the *Codex Iuris Canonici*. The decision to discuss both codes is a wise one and one that will encourage mutual recognition and cooperation between all the Catholic Churches. His detailed comparative commentary on this recent legislation will, I am sure, be very useful for many bishops and other administrators".

Prof. Clarence Gallagher SJ Former Rector of the Pontifical Oriental Institute in Rome and the Dean of the Faculty of Oriental Canon Law.

PAUL PALLATH was born on 7 June 1959 to a Catholic family of St. Thomas Christians (Syro-Malabar Church) in Kerala, India. After obtaining the degrees of Bachelor of Philosophy and Bachelor of Theology from the pontifical Institute of Theology & Philosophy, Alwaye, India, he was ordained to the priesthood for the diocese of Palai on 3 January 1987. He gained a doctorate in Eastern Canon Law (CCEO) from the Pontifical Oriental Institute in Rome in 1994. Afterwards he continued his studies at the Pontifical Lateran University in Rome and obtained another doctorate in Latin Canon Law(CIC) in 1997. At present he is an official of the Congregation for Divine Worship and the Discipline of the Sacraments (Vatican City State). He is the author of the books: The synod of Bishops of Catholic Oriental Churches, Rome 1994; Catholic Eastern Churches: Heritage and Identity (edited), Rome 1994; Church and Its Most Basic Element, Rome 1995 and Pope John Paul II and the Catholic Church in India, Rome and Changanacherry 1996.